

## **ADMINISTRATIVE PANEL DECISION**

### **Le Porc Gourmet SA, and Jorge Pork Meat, SL v. NATURAFRIG ALIMENTOS**

**Case No. D2023-4909**

#### **1. The Parties**

The Complainants are Le Porc Gourmet SA, Spain (“First Complainant”), and Jorge Pork Meat, SL, Spain (“Second Complainant”), represented by Integra, Spain.

The Respondent is NATURAFRIG ALIMENTOS, Brazil.

#### **2. The Domain Name and Registrar**

The disputed domain name <leporcgourmets.com> is registered with Key-Systems GmbH (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Hidden for privacy reasons) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 12, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 6, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on January 10, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainants are domiciled in Spain and are part of the internationally renowned Spanish meat group known as GRUPO JORGE.

The Complainant Jorge Pork Meat owns European Union trademark registration No. 18021515 for LE PORC GOURMET GRUPO JORGE and design mark, registered on July 20, 2019.

The Complainants have their website at “www.leporcgourmet.es”, which redirects to the main website of their group at “www.jorgesl.com”.

The disputed domain name was registered on August 16, 2023, and resolves to a website prominently featuring the trademark of the Complainant Jorge Pork Meat SL, and falsely pretending to be official website of the Complainant “The Pink Pig SA” and offering for sale products falsely pretending to be the Complainants’.

The Complainants successfully enforced their rights against a series of infringing domain names apparently controlled by the same person(s) as the disputed domain name, and include the domain names as follows:

- <fortunepigsl.es> (blocked content)
- <porcgourmet.es> (blocked content)
- <thepinkpigs.com> (cancelled)
- <leporcgourmet.es> (terminated)
- <thepinkpig.es> (cancelled)
- <fortunepigs.es> (cancelled)
- <thepinkpig-sa.com> (cancelled)
- <thepinkpig.eu> (cancelled)

#### **5. Parties’ Contentions**

##### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is identical or confusingly similar to the Second Complainant’s trademark. The disputed domain name is fully included in the Second Complainant’s trademark. The similarity is enhanced by the use of the Second Complainant’s trademark at the website at the disputed domain name.

The Complainants also contend that the Respondent has no rights or legitimate interests in the disputed domain name. The website at the disputed domain name offers products and services pretending to be of the Complainants’. Not only is the Second Complainant’s trademark used in the disputed domain name and at the website, but the address that appears in the contact section, corresponds to the address of the Complainants. Therefore, this is the case of not legitimate but fraudulent interest, both in the registration and in the use of the disputed domain name.

Finally, the Complainants contend that the disputed domain name was registered and is being used in bad faith. The disputed domain name is identical to the trademark previously registered by the Second

Complainant. Use of the disputed domain name is totally infringing the Second Complainant's trademark rights, since the logo of the Second Complainant is used in its content, as was exactly registered. Obvious fraud and unequivocal attempt to cause confusion among consumers, since the bad faith does not stop at the unlawful use of the Complainant's trademark in the disputed domain name and web content but usurp or try to usurp its legal position in the market, using its address and directly filling the disputed domain name with content that pretends to impersonate the Complainants. The Complainants are being permanently attacked since the end of 2022 by the same owners standing also behind the disputed domain name, who are creating and copying fraudulent web pages in which they pretend to be some of the companies of the Complainants' group.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **A. Consolidation of Complainants**

Section 4.11.1 of the [WIPO Overview 3.0](#) summarizes the consensus view of UDRP panels on the consolidation of multiple complainants, in part, as follows:

"In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

The Complainants are related corporate entities and have a common legal interest sufficient to justify consolidation. The Respondent has engaged in targeting with respect to each of the Complainants.

The Panel accepts this in favor of consolidation and grants it, and will refer to "the Complainant".

### **B. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel disregards gTLD ".com" for the purposes of the confusing similarity test of the [WIPO Overview 3.0](#), section 1.11.1.

Assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. Thus, the Panel disregards design element of the Complainant's trademark for the purposes of the confusing similarity check. [WIPO Overview 3.0](#), section 1.10.

The Panel finds the mark LE PORC GOURMET GRUPO JORGE is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Here the disputed domain name includes a dominant part of the trademark in the domain name.

The addition here of the letter “s”, does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

The Panel finds the first element of the Policy has been established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off of the Complainants can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds no evidence that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

The Panel finds the second element of the Policy has not been established.

### **D. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent shortly after registration of the disputed domain name confusingly similar to the Complainant’s trademark and placed a website prominently featuring the Complainant’s trademark, also, falsely pretending to be the official Complainant’s website. The Panel finds this confirms the Respondent knew and targeted the Complainant and its trademark when registering the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.2.2.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent’s bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

In this regard, the Panel finds that at least the second, the third and the fourth of the above scenarios apply to the present case confirming the Respondent's bad faith. [WIPO Overview 3.0](#), section 3.1.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off the Complainant constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <leporcgourmets.com> be cancelled.

*/Taras Kyslyy/*

**Taras Kyslyy**

Sole Panelist

Date: January24, 2024