

ADMINISTRATIVE PANEL DECISION

SundaeSwap Labs, Inc. v. Isha Prasoon Dube
Case No. D2024-0161

1. The Parties

The Complainant is SundaeSwap Labs, Inc., United States of America (“United States”), represented by Neal & McDevitt, United States.

The Respondent is Isha Prasoon Dube, India.

2. The Domain Names and Registrar

The disputed domain names <sundaefi.com> and <swaopp.com> are registered with Eranet International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2024. On January 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Name Unavailable) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2024, 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 February 10, 2024.

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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on March 12, 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 Complainant has provided a range of cryptocurrency-related services under the marks SUNDAE and SUNDAESWAP since April 2021.

The Complainant quickly gained popularity. For example, it has now amassed some 262,000 followers on X (Twitter) and 56,000 members on Discord and Reddit, as well as extensive media coverage including in Newsweek and Forbes.

The Complainant operates a website at “www.sundae.fi”.

The disputed domain names <swaopp.com> and <sundaefi.com> were registered on November 14 and 18, 2023, respectively.

The Respondent has used the disputed domain names to resolve to websites that contained close copies of a previous version of the Complainant’s website. In the case of <swaopp.com>, the infringing content was located at the subdomain <sundae.swaopp.com>.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain names have been registered and are being used in bad faith.

A. 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 trade mark 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 Panel finds the Complainant has established unregistered trade mark or service mark rights in the terms SUNDAE and SUNDAESWAP for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the mark SUNDAE is reproduced within the disputed domain name <sundaefi.com>. Accordingly, that disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “fi”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name <sundaefi.com> and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

As regards the disputed domain name <swaopp.com>, the overall facts and circumstances of a case, including relevant website content, may support a finding of confusing similarity in certain situations, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant. [WIPO Overview 3.0](#), section 1.7.

The Respondent has not appeared in this proceeding to dispute the Complainant’s assertion that the Respondent used the subdomain <sundae.swaopp.com> to resolve to what was essentially a fraudulent copy of the Complainant’s website. In these circumstances, the Panel thinks that it is reasonable to infer that the Respondent selected the disputed domain name <swaopp.com> because of its similarity to the SWAP component of the Complainant’s SUNDAESWAP mark and that the Respondent always intended to use, and has used, the disputed domain name in conjunction with the subdomain <sundae.swaopp.com> in order to capitalise on the confusing similarity between the disputed domain name <swaopp.com> as used by the Respondent and the Complainant’s mark.

The Panel notes that, in situations where an applicable Top Level Domain (“TLD”) and the second-level portion of the domain name in combination contain the relevant trade mark, panels may consider the domain name in its entirety for the purposes of assessing confusing similarity notwithstanding that the TLD is normally disregarded under the first element (e.g., for a hypothetical TLD “.mark” and a mark “TRADEMARK”, the domain name <trade.mark> would be confusingly similar for UDRP standing purposes). [WIPO Overview 3.0](#), section 1.11.

The Panel considers that, here, by analogy, the Panel may take account of the word “sundae” in the subdomain <sundae.swaopp.com> for the purpose of confirming the Panel’s finding of confusing similarity under the first element.

The Panel notes that a similar approach was taken in *Valero Energy Corporation, Valero Marketing and Supply Company v. Adda Abang*, WIPO Case No. [D2021-0036](#), where the panel took the respondent’s use of the subdomain “va” into account when comparing <leroenergy.com> to the mark VALERO.

The fact that the second-level portion of the disputed domain name <swaopp.com> includes an “o” that is not part of the “Swap” element of the Complainant’s SUNDAESWAP mark does not alter the Panel’s conclusion on confusing similarity. A domain name that consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9.

Accordingly, the disputed domain name <swaopp.com> is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. 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 recognised 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 names. 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 names 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) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Indeed, the Panel notes that the Respondent has not appeared in this proceeding to dispute the Complainant’s assertion that it registered and used the disputed domain names to fraudulently target the Complainant. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy. While, in the case of <swaopp.com>, the infringing content was located at the subdomain <sundae.swaopp.com>, that does not alter the Panel’s conclusion in relation to bad faith. Indeed, the Panel considers that the Respondent’s bad faith regarding the disputed domain name <swaopp.com> is obvious not only from its bad faith use of the subdomain <sundae.swaopp.com>, but also the fact that the Respondent also registered and used the disputed domain name <sundaefi.com> to resolve to a close copy of a previous version of the Complainant’s website.

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 names <sundaefi.com> and <swaopp.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: March 26, 2024