

## **ADMINISTRATIVE PANEL DECISION**

Greenfood AB v. Fatih Selim Ortaklar, Bahis24  
Case No. D2024-0542

### **1. The Parties**

The Complainant is Greenfood AB, Sweden, represented by Abion AB, Sweden.

The Respondent is Fatih Selim Ortaklar, Bahis24, Bulgaria.

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

The disputed domain name <greenfood.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 6, 2024. On February 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 6, 2024, 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 (Redacted for Privacy, Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 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 amendment to the Complaint on February 8, 2024.

The Center verified that the Complaint together with the amendment to the 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 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 7, 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 is a Sweden-based conglomerate in the business of healthy and sustainable food, comprising Sallacarte, Green Deli, Daily Greens and Tuorekset subsidiaries which are tied and associated with the GREENFOOD trademark. The Complainant had a turnover of SEK 5.2 billion in the year 2022. The Complainant has the domain name <greenfood.com>.

The Complainant is the owner of the following, amongst other, trademark registrations:

- European Union trademark registration No. 016239279 for the word and device mark GREENFOOD, registered on August 25, 2019, in classes 29, 30, 31, 32 and 43;
- Norwegian trademark registration No. 201709374 for the word and device mark GREENFOOD, registered on April 18, 2018, in classes 29, 30, 31, 32 and 43; and
- United Kingdom trademark registration No. UK00916239279 for the word and device mark GREENFOOD, registered on August 25, 2019, in classes 29, 30, 31, 32 and 43.

The disputed domain name was registered on October 20, 2023, and presently does not resolve to an active webpage.

The Complainant sent a Cease-and-Desist letter to the Registrar's abuse email address to be forwarded to the Respondent on November 22, 2023, followed by email communication reminders on December 7 and 21, 2023 (Annexes 6 and 7 to the Complaint).

#### **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 name.

Notably, the Complainant contends that the disputed domain name is nearly identical to the Complainant's GREENFOOD trademark with the addition of a third letter "e" which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark under the first element of the Policy.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- i) the Respondent has not been authorized by the Complainant to use the GREENFOOD trademark;
- ii) there is no evidence that the Respondent is commonly known by the disputed domain name;
- iii) the disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the disputed domain name; and
- iv) the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name.

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that it is a well-known company and the holder of several reputable trademarks, with a substantial and widespread reputation on the European markets for fresh produce and food solutions, being it highly unlikely that the Respondent chose the disputed domain name without prior knowledge of the Complainant's activities and trademark. Furthermore, the choice to retain a privacy protection service, the lack of reply to the Cease-and-Desist letter sent prior to this proceeding and the apparent non-use of the disputed domain name are further indicatives of the Respondent's bad faith conduct.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### **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 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 finds the mark 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 1.9.

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 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.

In that sense, and according to the evidence submitted, the Complainant has made a prime facie case against the Respondent who has not been commonly known by the disputed domain name and is neither licensed or authorized by the Complainant to use its trademark.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainant, the apparent passive holding of the disputed domain name does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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

### **C. 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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine includes: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; (ii) the Respondent's lack of reply to the Cease-and-Desist letter sent prior to this proceeding; (iii) the Respondent's choice to retain a privacy protection service; and (iv) the indication of what appears to be false or incomplete contact details, not having the Centre been able to deliver the written notice to the address indicated.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The third element of the Policy has therefore been met.

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 <greenfood.com> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*  
**Wilson Pinheiro Jabur**  
Sole Panelist  
Date: March 21, 2024