

ADMINISTRATIVE PANEL DECISION

Johnson Brothers v. Bijan Biswas, DDoSCure
Case No. D2024-1364

1. The Parties

The Complainant is Johnson Brothers, United States of America (“United States”), represented by Faegre Drinker Biddle & Reath, United States.

The Respondent is Bijan Biswas, DDoSCure, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <johnsons-brothers.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 2, 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, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 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 April 18, 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 April 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2024.

The Center appointed Jane Seager as the sole panelist in this matter on May 30, 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

First established in Minnesota, United States in 1953, the Complainant is a corporation engaged in the distribution of alcoholic beverages, trading under the name “Johnson Brothers” since 1966. The Complainant operates distribution facilities in 14 states and reported annual sales in excess of USD 2.8 billion in 2023. The Complainant is the registrant of the domain name <johnsonbrothers.com>, which resolves to its official corporate website.

The disputed domain name was registered on June 23, 2023. The disputed domain name resolves to a website (the “Respondent’s website”) that reproduces content from the Complainant’s official website, displaying the Complainant’s name and logo at the top of the page, text copied from the Complainant’s website, as well as the Complainant’s physical address in the website’s footer. The Respondent’s website includes “news” items about the acquisition of the Complainant by a third-party company as well as a video that refers to possible investment opportunities in the Complainant’s wine and vineyards, below which there is a link to “start investing now”. Clicking on the link leads Internet users to a form where they are invited to provide personal identifying information.

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.

The Complainant asserts unregistered rights in the JOHNSON BROTHERS trademark. The Complainant submits that the JOHNSON BROTHERS trademark in relation to the alcoholic beverage industry is distinctive as an arbitrary trademark, having no association with underlying goods and services. The Complainant submits that the disputed domain name is confusingly similar to its JOHNSON BROTHERS trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, there being no prior relationship between the Parties, nor any authorization for the Respondent to make use of the Complainant’s trademark in a domain name or otherwise. The Complainant submits that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services; rather, the disputed domain name resolves to a website that seeks to impersonate the Complainant in what appears to be a phishing scheme. The Complainant asserts that the reports of a third-party acquiring a majority stake in the Complainant are false, as are the investment opportunities referred to in the video posted on the Respondent’s website. The Complainant notes in this regard that it does not own any vineyards.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant asserts that the Respondent must have been aware of the Complainant’s trademark when registering the disputed domain name and submits that the Respondent’s use of the disputed domain name to impersonate the Complainant, as described above, amounts to evidence of registration and use of the disputed domain name in bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Matter: Identity of the Respondent

Paragraph 3.7.7.3 of the Registrar Accreditation Agreement provides:

"Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm."

The disputed domain name was registered in the name of a proxy service. In its reply to the Center's request for registrar verification, the Registrar stated that WhoIs-listed registrant information was that of a reseller. The Center sent a communication to the registrant email address provided by the Registrar requesting disclosure of any further underlying registrant information. The Center received no reply.

The Panel finds that the Complaint has been properly filed against the named Respondent as the registrant of record for the disputed domain name. The named Respondent has not come forward to disclose the identity of any licensee. In the circumstances, the Panel sees no barrier to proceeding to a decision on the merits naming the Respondent as Bijan Biswas, DDoSCure.

6.2. Substantive Matters

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is 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 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 Panel notes that the Complainant does not rely on registered trademark rights for the purposes of the Complaint. To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. The Panel is satisfied that the Complainant has made longstanding use of the "Johnson Brothers" name such that it has become readily associated in connection with the Complainant's alcoholic beverage distribution business. As noted below, the fact that the Respondent has

clearly sought to target the Complainant further supports a finding that “Johnson Brothers” has achieved significance as a source identifier. The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The disputed domain name reproduces the Complainant’s JOHNSON BROTHERS trademark in its entirety, altered only by the addition of the letter “S” to the element “JOHNSON” and the inclusion of a hyphen in the place of the space in the Complainant’s mark. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant trademark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

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.

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.

The disputed domain name resolves to a website that reproduces substantial portions of the Complainant’s official website. In addition, the Respondent’s website includes a video regarding a fictitious “investment opportunity”, not offered by the Complainant, and invites Internet users to “start investing” by providing personal identifying information. The Respondent has not come forward to submit a Response. The Panel infers that the Respondent is using the disputed domain name to impersonate the Complainant in the furtherance of a phishing scheme. Panels have held that the use of a domain name for illegal activity such as impersonation, phishing, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In the circumstances, none of the factors listed at paragraph 4(c) of the Policy can be said to apply.

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.

It is clear from the contents of the Respondent’s website that the Respondent was well aware of the Complainant when registering the disputed domain name, and did so with a view to creating a misleading impression of association between the disputed domain name and the Complainant.

As noted above, the disputed domain name resolves to a website that effectively impersonates the Complainant, providing information on what appears to be a fictitious investment scheme and which seeks to obtain personal identifying information from Internet users. Panels have held that the use of a domain name for illegal activity, here impersonation of the Complainant and the furtherance of an apparent phishing scheme, 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 <johnsons-brothers.com> be transferred to the Complainant.

/Jane Seager/

Jane Seager

Sole Panelist

Date: June 13, 2024