

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. nestleinr nestleinr
Case No. D2024-1541

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, represented internally.

The Respondent is nestleinr nestleinr, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 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 April 16, 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 April 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 8, 2024.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on May 14, 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 factual findings pertinent to the decision in this case are that:

1. the Complainant is a global agtech company with a focus on increased crop productivity, doing business under the trademark, SYNGENTA;
2. the Complainant is the owner of, inter alia, International (WIPO) Reg. No. 732663, registered from March 8, 2000, for SYNGENTA;
3. the disputed domain name was registered on March 9, 2024, and the registrant's information appears to have been redacted for privacy reasons;
4. the name of the Respondent (underlying registrant) was disclosed by the Registrar in consequence of these proceedings;
5. the disputed domain name is presently inactive but previously resolved to a login webpage using a stylised iteration of the registered trademark, together with other imagery essentially duplicating the login webpage of the Complainant's own website; and
6. a cease-and-desist letter from the Complainant to the Respondent dated March 26, 2024, went unanswered.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for its requested transfer of the disputed domain name.

In particular, the Complainant asserts trademark rights in SYNGENTA and submits that the disputed domain name is confusingly similar to its trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use its trademark or register any domain name incorporating the trademark. The Respondent has no trademark rights of its own.

Finally, the disputed domain name was registered and has been used for a nefarious purpose.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trademark rights. The Panel notes that a mark registered with a national or pan-national authority is evidence of trademark rights for the purposes of the Policy. The Complainant provides evidence of its International registration of the trademark and so the Panel finds that the Complainant has trademark rights.

The generic Top-Level Domain ("gTLD") ".com" can be disregarded for the purposes of comparing the disputed domain name with the trademark. Thereafter, the disputed domain name appends the term, "topin" to the trademark which the Complainant submits is either a meaningless addition, or may be understood to

include a reference to India (country code IN), the Respondent's place of domicile. In either case, the Panel finds the trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant need only make out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, after which the onus shifts to the Respondent to rebut that case by demonstrating those rights or interests.

The name of the Respondent as disclosed by the Registrar does not carry any suggestion that the Respondent might be commonly known by the disputed domain name. The Complainant states that it has not authorized use of the trademark and there is no evidence that the Respondent has any trademark rights of its own. Finally, the disputed domain name is not presently in use and the Panel accepts the Complainant's submission that the earlier use was an attempt to phish for the personal information of the Complainant's customers. Such use is in bad faith. It follows that a prima facie case has been made that the Respondent has no rights or interests in the disputed domain name.

The onus shifts to the Respondent. In the absence of a Response, the Panel finds that the Respondent has not discharged the onus and finds the Respondent has no rights or interests.

The Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and used in bad faith.

Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four circumstances, any one of which is taken to be evidence of the registration and use of a domain name in bad faith if established.

The four specified circumstances are:

- “(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 registration 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 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, respondent has intentionally attempted to attract, for commercial gain, internet users to respondent's 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 site or location."

The Panel finds that paragraph 4(b)(iv) of the Policy has direct application. The Panel has already found the disputed domain name to be confusingly similar to the trademark. Confusion is not inevitable but likely, and it can reasonably be inferred that the disputed domain name was registered with knowledge of the trademark and the Complainant's business. It can be further inferred that the Respondent's intention was commercial gain in some way, the exact mode being unimportant. In terms of the Policy, the Panel finds that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of that website. The fact that the disputed domain name is presently inactive does not prevent a finding of bad faith.

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 <syngentatopin.com> be transferred to the Complainant.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: May 24, 2024