

ADMINISTRATIVE PANEL DECISION

Fortune Pig SL, Jorge SL v. wadman mark, SPARTAN TRADE
Case No. D2024-1630

1. The Parties

The Complainants are Fortune Pig SL and Jorge SL, Spain, represented by Integra, Spain.

The Respondent is wadman mark, SPARTAN TRADE, Poland.

2. The Domain Name and Registrar

The disputed domain name <fortunepigs.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 (Hidden for privacy reasons) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on April 22, 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 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. The Respondent sent an email communication to the Center on April 19, 2024.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on May 21, 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 in this administrative proceeding are Fortune Pig SL and Jorge SL, Spain. The Complainants are part of a Spanish meat group known as GRUPO JORGE.

Jorge SL is the owner of the European Union device trademark FORTUNE PIG GRUPO JORGE, registration number 016858045. The trademark was registered on November 2, 2017, and covers goods and services in class 29, class 35, and class 39.

The disputed domain name was registered on March 22, 2024.

The disputed domain name resolves to a website that purports to be an official website of the Complainants, displaying the trademark and corporate name of the Complainants, one of the Complainants' postal address, and offering for sale goods identical to those of the Complainants.

5. Parties' Contentions

A. Complainant

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 confusingly similar to the Complainants' trademark and capitalizes on and takes advantage of the renown of the Complainants' trademark, aiming to unlawfully profit through this use.

The Complainants further contend that the Respondent has no rights or legitimate interests in the disputed domain name, and particularly that the Respondent registered and used the disputed domain name to redirect Internet users to a website where the Complainants' trademark, as well as services identical to those of the Complainants, are displayed, in order to impersonate the Complainants and thus mislead the Complainants' customers, with the aim of unlawfully profiting through this use. On this website the postal address of one of the Complainants is also displayed.

B. Respondent

The Respondent did not reply to the Complainants' contentions. Indeed, in its informal email dated April 19, 2024, the Respondent merely confirmed it is the registrant of the domain name and that he did not understand the communication "Notice of Registrant Information" sent by the Center to the parties.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainants must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainants have 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.

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 Complainants' 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 Complainants have 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 1.7.

Although the letter "s" at the end of the disputed domain name may have a bearing on the assessment of the second and third elements, the Panel finds the addition of such letter 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 1.8.

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.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants' 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.

The composition of the disputed domain name, comprising the dominant part of the Complainants' trademark, together with the content of the website at the disputed domain name carries a risk of Internet user confusion.

Furthermore, panels have held that the use of a domain name for illegal activity like impersonation/passing off, as it is the case here, 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

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 intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainants' trademark.

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.

The disputed domain name reproduces, without any authorization or approval, the dominant part of the Complainants' registered FORTUNE PIG GRUPO JORGE and device trademarks, i.e., "FORTUNE PIG" with the sole addition of the letter "s" at its end. The disputed domain name was registered several years after the Complainants' trademark was registered. In addition, the content on the Respondent's website reproduces exactly the logo and trademark of the Complainants and displays the postal address of one of the Complainants as its contact address. Moreover, the Respondent presents itself as Fortune Pig SL. It thus appears that the Respondent is attempting to impersonate the Complainants and thus mislead the Complainants' customers, with the aim of unlawfully profiting through this use.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainants' earlier rights to the FORTUNE PIG GRUPO JORGE and device trademarks, and chose the disputed domain name intentionally in order to misleadingly attract Internet users to its own website for commercial gain, by creating a likelihood of confusion with the Complainants' trademarks, and this amounts to bad faith use and registration of the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, claimed as impersonation/passing off, 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.

In the present case, the Panel further notes that the Respondent created web pages that imitate the Complainants' products and that was used to deceive customers.

The Panel finds that the Complainants have 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 <fortunepigs.com> be cancelled.

/Fabrizio Bedarida/
Fabrizio Bedarida
Sole Panelist
Date: May 31, 2024