

## **ADMINISTRATIVE PANEL DECISION**

### **FORTUNE PIG, SL, JORGE, SL v. MBOTA 16**

#### **Case No. D2024-3068**

#### **1. The Parties**

The Complainants are FORTUNE PIG, SL (the First Complainant) and JORGE, SL (the Second Complainant), Spain, both represented by Integra, Spain (hereinafter Collectively the Complainants).

The Respondent is MBOTA 16, Cameroon.

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

The disputed domain name <fortunepigsl.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 July 26, 2024. On July 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 26, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 29, 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 July 30, 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 July 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 20, 2024.

The Center appointed Anna Carabelli as the sole panelist in this matter on August 27, 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.

On September 17, 2024, the Complainant requested to add another domain name to the current proceeding. The Panel notes that panels are generally reluctant to accept such requests because the addition of further domain names would delay the proceedings (which are expected to take place with due expedition). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.12.2.

Considering the late submission of the Complainant's request (after the Decision due date), the Panel decides not to accept the Complainant's request. The Panel further notes that its declining would not prevent the filing of a separate complaint where such additional domain name may be addressed.

#### **4. Factual Background**

According to information in the Complaint, the Complainants are part of a Spanish meat group known as Grupo Jorge.

The Second Complainant is the owner of the European Union device trademark FORTUNE PIG GRUPO JORGE (number 016858045), registered on November 2, 2017 in Classes 29, 35 and 39.

The disputed domain name was registered on June 21, 2024, and resolves to a website that purports to be an official website of the Complainants, displaying the trademark and corporate name of the Complainants, and offering for sale the Complainants' related goods. As per the evidence in the Complaint, the disputed domain name was also used in a fraudulent email scheme.

#### **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 their trademark and company name;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

Based on the above the Complainants request the transfer of disputed domain name.

##### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## 6. Discussion and Findings

### 6.1. Preliminary Issue – Consolidation - Multiple Complainants

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. [WIPO Overview 3.0](#), section 4.11.1).

In the present case, the Panel notes both the Complainants are in the same corporate group and have a common interest in the relevant trademark registration since: (i) the Second Complainant holds the rights thereto, and (ii) the trademark is partially included in, and constitutes the company name of the Second Complainant.

The Panel finds that there is sufficient nexus to allow them to bring this Complaint as joint complainants (hereinafter collectively referred to as “the Complainants”). In these circumstances consolidation would be equitable and procedurally efficient.

### 6.2. Substantive Issues

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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 has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent’s rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

#### 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 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. Indeed, the disputed domain name partially reproduces the Second Complainant’s trademark - i.e.: the initial terms “fortune pig”, which also constitutes the company name of the First Complainant.

The addition of the letters “SL” (the Spanish acronym for the corporate form Sociedad Limitada) does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

The other additional element is the generic Top-Level Domain (gTLD) “.com”. A gTLD suffix generally has no capacity to distinguish a domain name from a trademark and as such is disregarded as insignificant for purposes of determining the similarity between the disputed domain name and the trademark, because the Top-Level-Domains (TLDs) are functionally necessary to operate the domain name. [WIPO Overview 3.0](#), section 1.11.1.

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 of the Complainants’ trademark and company name, 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 and phishing, 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 disputed domain name is confusingly similar to the Second Complainant’s registered trademark and reproduces the corporate name of the First Complainant;
- according to the uncontested evidence in the Complaint, the disputed domain name was blocked in 2022 as a result of a cease-and-desist letter sent by the Complainants, but it was subsequently activated again

without the Complainants' authorization. The Complainants then sought the cancellation of the disputed domain name in a prior UDRP procedure (*Fortune Pig SL, Jorge SL v. Panarchdel LTD* – WIPO Case No. [D2023-4907](#)) which ended with the decision dated January 24, 2024, in favor of the Complainants;

- At the time of the decision, the disputed domain name has been activated for the second time without the Complainants' authorization, in clear evidence of bad faith;
- The content of the disputed name imitating the Complainants demonstrates that the Respondent was aware of the Complainants;
- The disputed domain name was used in a fraudulent email scheme.

In using the disputed domain name, the Respondent appears to have intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainants' as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product on its website. This is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity here, to send scam emails impersonating the Complainant, 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 third element of the Policy has also been established.

## **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 <fortunepigsl.com> be transferred to the Complainants.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: September 10, 2024