

ADMINISTRATIVE PANEL DECISION

Wild Goose Holding Co, Inc., Wawa, Inc., The Wawa Foundation, Inc. v. Karl Schnurch, EdenMedia
Case No. D2024-3669

1. The Parties

The Complainants are Wild Goose Holding Co, Inc., Wawa, Inc., and The Wawa Foundation, Inc., United States of America (“United States” or “US”), represented by Caesar Rivise, PC, United States.

The Respondent is Karl Schnurch, EdenMedia, Seychelles.

2. The Domain Name and Registrar

The disputed domain name <wawafoundation.org> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 10, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 13, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainants on September 13, 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 amendment to the Complaint on September 16, 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 September 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on October 24, 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

It results from the Complainants' undisputed allegations that they are a leading retailer and operator of convenience stores and vehicle fueling stations in the United States, offering a wide variety of goods and services. In connection with their business, they have used the name and mark WAWA for more than 110 years in connection with dairy products and non-alcoholic beverages, retail food store services, fast food restaurant services, coffee and coffee based beverages, motor vehicle service station services and gasoline, credit card services, a variety of apparel, accessories and novelty items, online retail services, computer application software for mobile phones and portable computing devices.

In addition, they have used the name and mark THE WAWA FOUNDATION in connection with charitable foundation services, namely, providing funding, fundraising activities, monetary donations and financial assistance for programs and services of others.

The Complainant Wild Goose Holding Co, Inc. is the registered trademark owner of many trademarks consisting or containing the term "wawa", e.g. US trademark registration no. 890189, WAWA, registered on April 28, 1970, for goods in classes 29 and 30 and US trademark registration no. 4918228, THE WAWA FOUNDATION, registered on March 15, 2016 for services in class 36.

All the Complainants (Wild Goose Holding Co, Inc., Wawa, Inc. and The Wawa Foundation, Inc.) operate the website available at the domain name <thewawafoundation.org >.

The disputed domain name <wawafoundation.org> was registered on April 2, 2022. Furthermore, the evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click ("PPC") links in the Complainant's area of activity.

5. Parties' Contentions

A. Complainants

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, since the disputed domain name incorporates the Complainants' mark WAWA in its entirety and is almost identical to the Complainants' mark THE WAWA FOUNDATION.

The Complainants contend that the mark WAWA is well-known.

The Complainants further contend that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainants, the Respondents are not, and have never been, associated with the Complainants and the Whois registration information for disputed domain name fails to imply that the Respondent is commonly known by any name including "wawa". Indeed, it appears the Respondent is purposely using the confusingly similar disputed domain name with the intent to derive advantage from potential The Wawa Foundation beneficiaries and/or public user confusion.

Finally, the Complainants contend that the disputed domain name was registered and is being used in bad faith. According to the Complainants, prior UDRP proceedings and other information demonstrate that the

Respondent Karl Schnurch's pattern of bad faith in registering domain names that are confusingly similar to well-known marks of others with the intent to benefit financially or otherwise from such confusion.

Furthermore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, but rather is trading upon the fame and goodwill of the Complainants with the intent of purporting to be associated with the Complainants, having a name similar to that of the disputed domain name, for the purpose of deceiving those seeking the assistance of or believing they can make monetary donations to The Wawa Foundation. The Respondent derives financial benefit from the forwarding of such traffic to third-party websites, not in any way related to The Wawa Foundation.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Procedural issues – Consolidation of the Complainants

The Complaint was filed by three entities: i.e. Wild Goose Holding Co, Inc., Wawa, Inc. and The Wawa Foundation, Inc.. Wild Goose Holding Co, Inc., is the owner of the registered trademark for WAWA and THE WAWA FOUNDATION. All the Complainants operate the website available at the domain name <thewawafoundation.org>.

As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "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".

In the light of the above, the Panel finds that the Complainants have a specific common grievance against the Respondent because they share a common legal interest in the trademark rights on which this Complaint is based since the Complainants allege a corporate connection. Against this background, the Panel does not see reasons why a consolidated Complaint brought by the Complainants against the Respondent would not be fair and equitable. Moreover, the Respondent failed to come forward with any allegations or evidence to object the consolidation. For reasons of procedural efficiency, fairness and equity the Panel therefore accepts the joint Complaint. Therefore, throughout the remainder of the current Decision, the Panel will refer to the Complainants as "the Complainant".

6.2 Substantive issues

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 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 entirety of the mark WAWA is reproduced within the disputed domain name. The Complainant's THE WAWA FOUNDATION mark is also recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks WAWA and THE WAWA FOUNDATION for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's 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 Panel notes that the disputed domain name <wawafoundation.org> entirely contains the Complainant's WAWA mark and is almost identical to the Complainant's mark THE WAWA FOUNDATION (i.e. only the article "the" is missing) and to the domain name <thewawafoundation.org> used by the Complainant. The disputed domain name is not a combination of terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (i.e. a parking page displaying PPC links in the Complainant's area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods

or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a parking page displaying PPC links in the Complainant's area of activity.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

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.

On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (incorporating the entirety of the Complainant's mark WAWA and being almost identical to the Complainant's mark THE WAWA FOUNDATION);
- (ii) the content of the website to which the disputed domain name directs (i.e., a parking page displaying PPC links in the Complainant's area of activity);
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name;

Finally, the Respondent has been involved in a number of trademark-abusive domain name registrations (e.g., *Matmut v. Karl Schnurch, EdenMedia*, WIPO Case No. [D2023-4446](#); *Linde Plc v. Karl Schnurch, EdenMedia*, WIPO Case No. [D2023-0973](#); *CWI, LLC v. Karl Schnurch, EdenMedia*, WIPO Case No. [D2023-4462](#); *Mav Media, LLC v. Karl Schnurch, EdenMedia*, WIPO Case No. [D2022-3883](#)). In the view of the Panel, this behaviour demonstrates a pattern of conduct by the Respondent of taking advantage of trademarks of third parties without any right to do so and is indicative of the Respondent's bad faith.

Previous UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration, see [WIPO Overview 3.0](#), section 3.1.2. The Panel considers that this is the case here.

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 <wawafoundation.org> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: November 7, 2024