

## **ADMINISTRATIVE PANEL DECISION**

Seaboard Corporation v. Pho Lee

Case No. D2024-3743

### **1. The Parties**

The Complainant is Seaboard Corporation, United States of America, represented by Hovey Williams LLP, United States of America.

The Respondent is Pho Lee, United States of America.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2024. On September 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 17, 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 September 20, 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 September 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 16, 2024.

The Center appointed Nels T. Lippert as the sole panelist in this matter on October 22, 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 Complainant, Seaboard Corporation, is a Delaware, United States of America corporation. The Complainant is a global food, energy and transportation company that was founded in 1918 as Seaboard Flour Co. After merging with Hathaway Industries in 1959, it became publicly traded under its current name. Seaboard Foods was founded in the early 1990s and is a wholly owned subsidiary of the Complainant. Seaboard Foods is a United States pork producer and processor, exporting to more than 30 countries.

The Complainant's SEABOARD and SEABOARD FOODS trademarks are registered in the United States of America as follows:

Registration No. 2246196, SEABOARD, issued May 18, 1999;  
Registration No. 2991520, SEABOARD, issued September 6, 2005;  
Registration No. 3519968, SEABOARD FOODS, issued October 21, 2008; and  
Registration No. 6969346, SEABOARD FOODS and design, issued January 31, 2023.

Additionally, the Complainant is the owner of numerous registrations of the SEABOARD and SEABOARD FOODS trademarks in jurisdictions around the world.

The Complainant owns and operates the website for Seaboard Foods under the domain name <seaboardfoods.com> which was registered on May 13, 2005.

The disputed domain name was registered on July 15, 2024, and currently resolves to an inactive page. At the time the disputed domain name was registered, it was used in an email phishing scheme that impersonated an employee of Seaboard Foods in an attempt to scam customers of the Complainant's subsidiary to send payments to a bank account belonging to or associated with Respondent.

The Respondent is an individual with an address in Indiana, United States of America.

#### **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.

Notably, the Complainant contends that the Respondent is not affiliated with the Complainant or any of the Complainant's affiliates and is not licensed to use the Complainant's SEABOARD or SEABOARD FOODS trademarks for any purpose. The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's SEABOARD FOODS trademarks because it only removes the letter "r" from the word "seaboard" and, therefore, is an intentional misspelling of the Complainant's SEABOARD FOODS trademarks. The Complainant has produced evidence of the Respondent's bad faith registration and use of the disputed domain name. Specifically, the Complainant's evidence shows the Respondent's use of the disputed domain name to send phishing emails posing as an employee of Seaboard Foods to multiple contacts at a customer of Seaboard Foods requesting the customer to update its banking information to include a new bank account belonging to or associated with the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

As noted above, the Respondent did not respond to the Complainant's allegations. Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint. The Panel does not find any exceptional circumstance in this case.

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following:

(i)The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii)The respondent has no rights or legitimate interests in respect of the domain name; and

(iii)The domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall 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"

### **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 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 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. In this case, the disputed domain name is an obvious misspelling of the Complainant's SEABOARD FOODS trademark. As noted in section 1.9 of [WIPO Overview 3.0](#), "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 mark for purposes of the first element". In this case, the deletion of the letter "r" of the Complainant's marks in the disputed domain name is a classic example of typosquatting by deletion of a letter. Furthermore, it is well established that the applicable Top-Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [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 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.

Here, the Respondent used the disputed domain name to pose as an employee of the Complainant’s subsidiary and request at least one customer to change banking information to a bank account belonging to or associated with the Respondent.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud 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 registered and used the disputed domain name in an apparent scheme to impersonate an employee of the Complainant’s affiliate in a phishing activity to cause customers to make payments to a bank account owned or affiliated with the Respondent. The Complainant has presented evidence of such illegal activity.

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.

Panels have held that the use of a domain name for illegal activity, here, claimed phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud 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 <seaboatfoods.com> be transferred to the Complainant.

*/Nels T. Lippert/*

**Nels T. Lippert**

Sole Panelist

Date: November 4, 2024