

ADMINISTRATIVE PANEL DECISION

The Taylor Provisions Company v. Kathleen Hingel, Novel Products Case No. D2024-4077

1. The Parties

The Complainant is The Taylor Provisions Company, United States of America (“United States”), represented by Fox Rothschild LLP, United States.

The Respondent is Kathleen Hingel, Novel Products, United States, self-represented.

2. The Domain Name and Registrar

The disputed domain name <taylorporkroll.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2024. On October 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 9, 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 amendment to the Complaint on October 11, 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 October 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 4, 2024. Upon request from the Respondent, and with no objection from the Complainant, the due date for filing the Response was extended to November 18, 2024. The Response was filed with the Center on November 19, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on November 25, 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 is a corporation organized under the laws of the State of New Jersey, United States and headquartered in Trenton, New Jersey. The Complainant produces TAYLOR PORK ROLL and TAYLOR HAM food products, sold through retailers and more recently online through the Complainant's website at "www.originaltaylorporkroll.com" and linked social media accounts. (This domain name was registered on May 31, 2023.)

The Complainant is the successor in interest to the company formed by John Taylor and his son in Trenton in 1888. The Taylors sold "Taylor's Prepared Ham", renamed "Taylor Pork Roll" in 1906. This was originally sold by grocers and in sandwich shops operated by the Complainant's predecessor in New Jersey, and the Complainant's predecessor operated a stand selling the product at the New York World's Fair in 1939. The Complaint attaches media articles mentioning the Complainant's TAYLOR PORK ROLL since 1993, from newspapers in New Jersey, Maryland, Florida, and Georgia, as well as a national food website.

The Complainant holds several United States trademark registrations for figurative marks featuring the words TAYLOR or TAYLOR'S PORK ROLL in association with prepared pork products. The oldest, number 61356, was registered on March 19, 1907 (including the words "John Taylor's Pork Roll") in International Class 29. The Complainant also owns United States Trademark Registration Number 7511350 for the standard character mark TAYLOR PORK ROLL, registered on September 24, 2024, in International Class 29.

The Registrar reports that the disputed domain name was created on October 22, 1999, and was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Kathleen Hingel of the organization Novel Products, with a postal address in the state of New Jersey, United States and a contact email using the domain name <jerseyporkroll.com>. That domain name is used for a website advertising "Jersey Pork Roll", "Original Taylor Pork Roll aka Taylor Ham", which offers to ship pork products nationwide. These include the Complainant's TAYLOR PORK ROLL products and also products of other New Jersey food vendors, "Sabrett's Hot Dogs, Habbersett Scrapple and more", for "a taste of home". The website includes a history of the Complainant's TAYLOR PORK ROLL product. The disputed domain name redirected to this website (the "Respondent's website") from at least 2022 until after the parties exchanged correspondence and telephone calls in the summer of 2024.

At the time of this Decision, the disputed domain name resolves to a landing page hosted by the Registrar with a message that the disputed domain name is registered "but may still be available" and linking to the Registrar's domain broker service. The Complainant attaches an October 3, 2024, screenshot showing that the landing page at that time also featured pay-per-click ("PPC") links to third-party advertisers, including links to companies selling "Cured Meats" and "Meat Products" in competition with the Complainant.

The Complainant wrote to the Respondent in 2023 requesting transfer of the disputed domain name, following up with a similar demand from counsel when there was no response. This resulted in a telephone conversation in which Ms. Hingel's business partner, Adam Preston, stated that the Respondent had acquired the disputed domain name "last year" (2022) and offered to surrender the disputed domain name in exchange for making the Respondent a distributor of the Complainant's products, with a link from the Respondent's website. Mr. Preston also recounted an earlier conversation that Ms. Hingel had with one of the Complainant's sales personnel, Eric Graver, in which Ms. Hingel mentioned the possibility of acquiring the disputed domain name. The parties differ in their accounts of that telephone call, but they agree that Mr. Graver indicated that the Complainant would not be interested in selling online. In subsequent communications with the Respondent in 2023, the Complainant denied that its salesperson granted

permission for the Respondent to use the Complainant's mark in a domain name or had authority to do so, and the Complainant rejected the Respondent's proposal to link to the Complainant's website, as the Complainant does not allow other customers or distributors to do this. The Respondent agreed to cease redirecting the disputed domain name to the Respondent's website. The Complainant says it offered to purchase the disputed domain name (the Respondent says this offer came anonymously through the Registrar), but no sale was agreed, and this proceeding followed.

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 disputed domain name is identical or confusingly similar to its TAYLOR PORK ROLL mark, differing only by omitting the spaces between the words. The Complainant denies giving permission to the Respondent to use the mark in a domain name and says it has no direct relationship with the Respondent, which is not an authorized distributor or reseller or the Complainant's products.

The Complainant acknowledges that the Respondent Ms. Hingel had a conversation with a salesperson employed by the Complainant but states that "Ms. Hingel was well aware of Mr. Graver's position as a salesperson at the Complainant and that, in such capacity, he did not have the ability to grant a third party, such as the Respondent, the right to use any of the Complainant's intellectual property". The Complainant argues that the Respondent fails the "*Ok! Data*" test for asserting a legitimate interest in using the Complainant's trademark as a reseller, as the Respondent redirected the disputed domain name to its own site selling other manufacturers' products in addition to the Complainant's and also did not accurately disclose its relationship with the Complainant. A "Pork Roll FAQ" page on the website correctly states that the Respondent is not the manufacturer or trademark holder, but this is unlikely to be seen by all or most site visitors, and other text on the Respondent's website falsely implies an association with the Complainant, such as "Buy Original Taylor Pork Roll", "it will arrive at your door in the least expensive way possible, packaged professionally with no handling charge". Moreover, there is no "legal notices" or "terms of use" page identifying a source other than the Complainant.

The Complainant argues that this conduct amounts to bad faith under the Policy, as the Respondent was admittedly aware of the Complainant's mark and traded on it without permission, falsely implying an association with the Complainant. The Respondent's website similarly advertises other trademarked products of the Complainant, TRENTON PORK ROLL and TAYLOR HAM, while not clearly identifying the Respondent's association (or lack thereof) with the Complainant. The Complainant cites the Policy's example of bad faith in attempting to create confusion as to source or sponsorship in order to attract Internet users for commercial gain. The Complainant observes further that this also occurred when the Respondent allowed the disputed domain name to be parked for PPC advertising including links to other competitors' sites.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name. The Respondent, who is self-represented, does not contest the Complainant's trademark rights but argues that the Respondent has enhanced the Complainant's sales and reputation as a reseller for over 20 years, advertising the Complainant's products online and shipping them nationally while the Complainant only established an online presence in 2023. The Respondent Ms. Hingel states that while working for another distributor in 2004 she discovered that the disputed domain name redirected to the website of a company called PorkRollXpress that distributed the products of the Complainant and third parties. Ms. Hingel contacted the Complainant, but she was told that

it had no interest in selling online or shipping nationwide. She then acquired <jerseyporroll.com> and launched the Respondent's website. In 2005 or 2006 she contacted the Complainant to ask for permission to give away promotional T-shirts branded with TAYLOR PORK ROLL but was denied permission. The Respondent recounts that in 2010 PorkRollXpress ceased doing business, and in 2012 the Respondent called the Complainant to inform it that the disputed domain name was not in active use and possibly available for purchase. The Complainant was still not interested, and the disputed domain name was acquired by a foreign company selling pet food. Ms. Hingel states that she found that the disputed domain name was available in 2015 and again contacted Mr. Graver, the Complainant's salesperson, who again said the Complainant was not interested. This time, Ms. Hingel purchased the disputed domain name and redirected it to the Respondent's website. Ms. Hingel states that the Respondent has spent approximately USD 120,000 advertising TAYLOR products since 2004, including thousands of dollars on Google advertising for the disputed domain name.

Ms. Hingel acknowledges that the Respondent receives many calls from people "believing we manufactured the product" but the Respondent explains they only ship it, they are not the manufacturers, as stated on the Respondent's website. The Respondent argues, in effect, that it has made appropriate disclosures and taken steps to avoid confusion. The Respondent contends that at all times it has acted in good faith to promote the Complainant's brand and maintain its reputation, and "should we have made any mistake along the way, we were always and remain ready and willing to correct said mistake to be in good standing with Taylor Provisions."

6. Discussion and Findings

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 (the recently registered TAYLOR PORK ROLL word mark and various, older figurative marks with similar textual elements) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the registered word mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark 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. Even by the Respondent's account of the verbal interactions with the Complainant's sales representative in 2015 and subsequently, and then with counsel for the Complainant in 2023, there is no persuasive evidence that the Complainant granted the Respondent permission to use the Complainant's mark in the disputed domain name. The Respondent has been an unauthorized reseller of the Complainant's products for many years and could conceivably have made a legitimate, nominative fair use of the Complainant's mark in an appropriate domain name that did not imitate the Complainant and was used for a website that met, for example, the *Oki Data* criteria for assessing fair use. [WIPO Overview 3.0](#), section 2.8. The Respondent's website to which the disputed domain name redirected does not exclusively sell the Complainant's products, so other manufacturers are benefitting from the goodwill associated with the Complainant's mark. The Respondent's website also does not prominently and accurately indicate the Respondent's relationship with the Complainant, as described above and as evidenced by the fact that the Respondent by its own account has received numerous calls from confused customers. This factor matters because such confusion potentially affects the Complainant's reputation, and customers have a right to know with whom they are dealing and whether it has implications for quality, deliveries, returns, credits, and other potential after-sales issues. Moreover, the nature of the disputed domain name in this case is itself excessively imitative of the Complainant, consisting solely of the Complainant's registered word mark (which, on this record, had likely attained common law trademark status by the time the disputed domain name was created and certainly by the time the Respondent acquired it). In sum, this disputed domain name has an excessively high risk of imputed association with the Complainant, and the Respondent's associated website content does not meet accepted standards for avoiding confusion and making legitimate referential use of a mark in a domain name.

Accordingly, 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 acknowledges prior awareness of the Complainant's marks and argues that it sought to protect them. In fact, as an unauthorized reseller the Respondent has likely increased sales of the Complainant's products, especially as the Complainant itself was slow to embrace online advertising channels. But the Complainant had the right to control the use of its trademarks in domain names and online advertising; that was not a decision for the Respondent to take on the Complainant's behalf, however well-intentioned. The Respondent did not satisfy the criteria for legitimate, nominative fair use of the mark in the disputed domain name, as discussed in the preceding section, and so its unauthorized use of an identical or confusingly similar domain name to attract Internet users for commercial gain comports with the example of bad faith found in the Policy, paragraph 4(b)(iv). Parking the disputed domain name for PPC advertising by competitors also falls within that example of bad faith, and the Respondent failed to take steps to prevent this for a time.

Thus, although the Respondent may have meant only to increase sales for the Parties' mutual benefit, the Panel must find that the Respondent acted in a manner that violated the Complainant's rights and endangered its reputation. This constitutes bad faith within the meaning of 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 <taylorporkroll.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: December 9, 2024.