

ADMINISTRATIVE PANEL DECISION

J&J Snack Foods Corp. v. Name Redacted Case No. D2024-4273

1. The Parties

The Complainant is J&J Snack Foods Corp., United States of America (“United States”), represented by MarkMonitor, United States.

The Respondent is Name Redacted. ¹

2. The Domain Name and Registrar

The disputed domain name <jjsnackusa.com> is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 16, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing additional contact details. The Center sent an email communication to the Complainant on October 24, 2024, providing the registrant and contact information disclosed by the Registrar. The Complainant filed an amended Complaint on October 28, 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”).

¹The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 29, 2024. In accordance with the Rules, paragraph 5, the due date for the Response was November 18, 2024. A person with a name corresponding to that of the Respondent, as provided by the Registrar, sent an email communication to the Center on November 1, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on November 29, 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 United States company that manufactures, markets and distributes snack foods and frozen beverages in the United States, Canada and Mexico.

The Complainant operates its primary business website at the domain name <jjsnack.com> registered in 1996. It asserts unregistered trademark rights in the JJSNACK mark based on nearly 30 years of use of this mark, including in its domain name, and on the fact that all online search results for the term “jjsnack” relate to the Complainant. Additionally, the Complainant is the proprietor of United States Trademark Registration No. 2851297 for the mark J&J SNACK FOODS CORP. (word mark) registered on June 8, 2004, claiming first use in 1971 for goods in class 30 and 1999 for goods in class 32.

The disputed domain name was registered on March 5, 2024. At the time of the Complaint and of this Decision, it redirected to the Complainant’s website at the domain name <jjsnack.com>. The record contains evidence that email exchange (“MX”) records have been configured for the disputed domain name.

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 confusingly similar to its JJSNACK mark, except for the addition of the geographical term “usa,” which corresponds with the Complainant. It is confusingly similar to the Complainant’s registered J&J SNACK FOODS CORP. mark. The Respondent is not connected to the Complainant and is not authorized to use its mark. The disputed domain name redirects to the Complainant’s website, which could mislead Internet users into thinking that the Respondent is associated with the Complainant. The Complainant was founded in the United States in 1971 and operates over 175 facilities in 44 states in the United States, Mexico and Canada. It owns 25 brands including Soft Pretzels, Pretzel Fillers, Icee, Slush Puppie, Arctic Blast, Pepe Churros, California Churros, Funnel Cake Factory Funnel Cakes, Luigi’s Real Italian Ice, Daddy Ray’s fruit bars, and, and Minute Maid.

The Complainant’s J&J SNACK FOODS CORP. and JJSNACK marks enjoy a substantial reputation. It is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name. This is emphasized by the structure of the disputed domain name and the fact that it redirects to the Complainant’s website. The Registrant registered the disputed domain name to prevent the Complainant from registering it. The configuration of MX records for the disputed domain name indicates a risk that the disputed domain name will be used for fraudulent activities.

The Complainant requests transfer of the disputed domain name.

B. Respondent

The Respondent did not provide a substantive response to the Complainant's contentions. On November 1, 2024, a person with a name corresponding to the name of the Respondent, as provided by the Registrar, sent an email to the Center with the following contents: "[...] I am not associated with the above domain name. I do not know how my name became tied to it or if maybe you just have the wrong [Respondent]."

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three 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; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name 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 the trademark J&J SNACK FOODS CORP. in which the element "'snack foods corp.'" is disclaimed. The Panel notes that trademark registrations with disclaimed terms typically would not affect panel assessment of standing or identity/confusing similarity under the UDRP. [WIPO Overview 3.0](#), section 1.2.3.

Additionally, based on the un rebutted evidence presented, the Panel finds the Complainant has established unregistered trademark or service mark rights in the JJSNACK mark for the purposes of the Policy. In this respect, the Complainant has provided evidence that it has been using JJSNACK as a source identifier of its products offered through the website at its domain name <jjsnack.com> since at least 2004 such that the Panel finds that the un rebutted evidence filed by the Complainant proves that JJSNACK has acquired sufficient relevant secondary meaning in connection with the Complainant's products sufficient to confer trademark rights on the Complainant. The fact that the Respondent has targeted the Complainant by redirecting the disputed domain name to the Complainant's website confirms the Complainant's assertion that its trademark has acquired significance as a source identifier. [WIPO Overview 3.0](#), sections 1.3 and 1.15.

The entirety of the JJSNACK mark is reproduced within the disputed domain name. The Complainant's JJSNACK 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 addition of other terms (here, "usa") may bear on assessment of the second and third elements, the Panel finds the addition of such a term 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 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.

There is no evidence that the Respondent is commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish the Respondent’s rights therein. The disputed domain name consists of the Complainant’s unregistered JJSNACK mark (and as such is similar to the Complainant’s own domain name <jjsnack.com>), adding “usa,” referring to the Complainant’s original place of business. The Panel finds that such composition indicates targeting of the Complainant.

This finding is further reinforced by the fact that the disputed domain name redirects to the Complainant’s own website. The Panel is satisfied that such redirection has been created with the intention of misleading Internet users. Such use cannot confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.3.

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.

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.

In the present case, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. The Complainant’s rights in its JJSNACK and J&J SNACK FOODS CORP. mark predate by at least 20 years the registration of the disputed domain name. The disputed domain name contains the Complainant’s JJSNACK trademark and, together with the use to which the disputed domain name has been put, clearly implies a link with the Complainant’s business.

In this regard, the disputed domain name redirects to the Complainant’s website. Such conduct is probative of bad faith, as the Respondent thereby creates a real or implied ongoing threat to the Complainant. See [WIPO Overview 3.0](#) section 3.1.4. Moreover, the record reflects that the Respondent has configured MX records for the disputed domain name. In light of the finding that the Respondent has no rights in the disputed domain name, the Panel considers that redirection to the Complainant’s website together with

preparatory actions for sending emails clearly indicate the Respondent's intention to use the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1.1.

The Respondent has provided no good-faith explanation for its actions nor does the Panel believe any such explanation is plausible.

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 <jjsnackusa.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: December 13, 2024