

## **ADMINISTRATIVE PANEL DECISION**

SF Investments, Inc. v. Markus Hensel

Case No. D2024-4287

### **1. The Parties**

Complainant is SF Investments, Inc., United States of America (U.S.), internally represented.

Respondent is Markus Hensel, U.S.

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

The disputed domain name <smithfieldfood-inc.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 October 17, 2024. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 21, 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 (Redacted for Privacy, Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on October 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 22, 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 Respondent of the Complaint, and the proceedings commenced on October 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 13, 2024.

The Center appointed Timothy D. Casey as the sole panelist in this matter on November 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.

#### 4. Factual Background

Complainant is a subsidiary to Smithfield Foods, Inc., the largest pork manufacturer in the world. Complainant is the exclusive owner of numerous marks, including a mark first used in 1936, that it licenses to Smithfield Foods, Inc. for various meat products sold in the U.S. and worldwide. Complainant has registrations for marks including or for SMITHFIELD (the “SMITHFIELD Marks”) as follows:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
SMITHFIELD	U.S.	29	2624764	September 24, 2002
SMITHFIELD BY LUTER (Design)	U.S.	29	1104410	October 17, 1978
SMITHFIELD (Design)	U.S.	29	2989997	August 30, 2005

The disputed domain name was registered on October 6, 2024. Complainant provided evidence indicating that the disputed domain name was utilized in an email impersonating an employee of Complainant’s parent company.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name is confusingly similar to the SMITHFIELD Marks because the SMITHFIELD Marks are fully incorporated into the disputed domain name and form the most dominant element of the disputed domain name. Complainant also notes that the disputed domain name is almost identical to the parent company’s legal name and is only missing the “s” in “foods”.

Complainant contends Respondent has no legitimate interest in the disputed domain name and does not own any registered or unregistered rights in the SMITHFIELD Marks. Complainant contends Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and is misusing the disputed domain name to deceive customers and vendors into believing they are communicating with Complainant’s parent company, as evidenced by a fraudulent email received by a vendor of the parent company that impersonates an employee of Complainant’s parent company. Complainant expressed concern that the email is being used to conduct a scam or other illegal activity and constitutes an immediate threat to Complainant and its legitimate business as well as the general public.

Complainant contends that bad faith registration is evident from the fact that the disputed domain name uses the SMITHFIELD Mark as the dominant element and is nearly an exact copy of Complainant’s parent’s legal name. Complainant further contends that Respondent’s use of the disputed domain name to impersonate an email address of an employee of Complainant’s parent company evidences bad faith use.

##### B. Respondent

Respondent did not reply to Complainant’s contentions.

## **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 Complainant's SMITHFIELD Marks and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the SMITHFIELD Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "food-inc", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the SMITHFIELD Marks 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, 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 Respondent must have known of Complainant's SMITHFIELD Marks at the time of registration as there is no other reasonable explanation as to why the disputed domain name is essentially the same as Complainant's parent's legal name. Respondent's impersonation of Complainant's parent's employee's email indicates bad faith use.

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 impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <smithfieldfood-inc.com> be transferred to Complainant.

*/Timothy D. Casey/*

**Timothy D. Casey**

Sole Panelist

Date: December 10, 2024