

ADMINISTRATIVE PANEL DECISION

Cargill, Incorporated v. Jhon Michael Reyes Tiu
Case No. DPH2022-0003

1. The Parties

The Complainant is Cargill, Incorporated, United States of America (“United States”), represented by Quisumbing Torres Law Firm, Philippines.

The Respondent is Jhon Michael Reyes Tiu, Philippines.

2. The Domain Name and Registrar

The disputed domain name <tip-top.ph> is registered with DotPH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 16, 2022. On December 16, 2022, the Center transmitted by email to Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 2022, 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 Respondent sent informal communications to the Center on January 19, January 30, and February 8, 2023.

The Center verified that the Complaint satisfied the formal requirements of the .PH Uniform Domain Name Dispute Resolution Policy (“phDRP” or the “Policy”), the Rules for .PH Uniform Dispute Resolution Implementation Rules (the “Rules”), and the WIPO Supplemental Rules (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was February 2, 2023. The Center proceeded to appoint the Panel on February 8, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on February 16, 2023. 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 United States and having its principal place of business in Minnesota, United States. It is a global food corporation.

The Complainant supplies meat, poultry, and related goods and services under the name and mark TIP-TOP. It is the owner of various trademark registrations including:

- Philippines trademark registration number 10448 for a combined mark comprising the text TIP-TOP and a humorous chicken design, registered on December 19, 2019, for goods including meat, fish, poultry, and game in International Class 29; and
- Mexico trademark registration number 1063561 for a word mark TIP TOP, registered on September 30, 2008, for fast food services in International Class 43.

The disputed domain name was registered on April 7, 2022.

Neither the Complainant nor the Respondent has provided any evidence of any website to which the disputed domain name may have resolved. However, pursuant to paragraph 2(a)(ii)(C) of the Rules, notice of the Complaint was provided to the contact form available on the disputed domain name, which showed that the disputed domain name resolved at that time to a website promoting a range of yogurt drinks under the name “tip-top”. At the date of this Decision, the disputed domain name did not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that it first used the TIP-TOP trademark in Nicaragua in 1958 and that it currently uses that mark in various territories in Central and South America as well as the Philippines. The Complainant provides examples of promotional materials relating to its TIP-TOP brand. It also provides evidence of media coverage dated May 2021 concerning a joint venture in the Philippines for the launch of a consumer brand named “Tip-Top Premium Chicken”.

The Complainant submits that the disputed domain name is identical or confusingly similar to its TIP-TOP trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never authorized the Respondent to use the TIP-TOP trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent cannot claim to be making legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. It contends that the disputed domain name is identical to its TIP-TOP trademark and that the Respondent must have chosen that name in order to take unfair advantage of the Complainant's goodwill. The Complainant submits that the Respondent's use of the disputed domain name is likely to result in the diversion of its legitimate trade and has the potential to damage the Complainant's reputation.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Reply to the Complainant's contentions. In his emails to the Center referred to above, the Respondent initially stated that he intended to disconnect the relevant website

immediately and abandon the registration of the disputed domain name after April 2023. In his email dated February 8, 2023, the Respondent stated that he had “already deleted” the relevant website and the disputed domain name.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights for a combined mark including the text TIP-TOP and a word mark TIP TOP. The disputed domain name replicates these textual terms and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant’s submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has moreover failed to file a substantive Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(b) of the Policy or otherwise.

The Panel notes that the disputed domain name appears to have once resolved to a website promoting a range of yogurt drinks. However, the Respondent makes no assertion in this proceeding that this website represents a *bona fide* offering of goods or services in that regard; to the contrary, in response to the proceedings, the Respondent has stated that it deleted the website at the disputed domain name. In the circumstances, the Panel finds that the second element is satisfied.

C. Registered and Used in Bad Faith

Similar considerations apply to this element as in the case of rights or legitimate interests above. The Respondent makes no denial of the Complainant’s submission that he registered and has used the disputed domain name in the knowledge of a third party trademark and with the intention of taking unfair advantage thereof. The Panel therefore finds that the third element is met.

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, <tip-top.ph>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: February 24, 2022