

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. Debbie Mathinson
Case No. D2022-1611

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, represented internally.

The Respondent is Debbie Mathinson, United States of America (“United States” or “US”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2022. On May 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 5, 2022, 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 May 5, 2022.

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 May 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 27, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 1, 2022. 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 in this administrative proceeding is part of Syngenta Group, a global, science-based agricultural technology company with 28,000 employees in 90 countries of the world.

Among others the Complainant owns the following trademark registrations for the word mark SYNGENTA:

- International Trademark Registration (“IR”) No. 732663, registered since March 8, 2000 for multiple goods and services of the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (“Nice Classification”), valid in over 40 jurisdictions over the world, and

- United States (“US”) Trademark Registration No. 3036058, registered since December 27, 2005 for multiple goods and services of the Nice Classification.

The disputed domain name was registered on January 22, 2022, and originally resolved to an error message website. After the Complainant sent a cease-and-desist notice to the Respondent dated March 2, 2022, the disputed domain name had at one time resolved to a marketing content website. At the time of rendering the decision, the disputed domain name resolved to the original error message website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name <syngent.xyz> is confusingly similar to its SYNGENTA trademark, as it is a misspelling of it, varying from the correct spelling in one letter omitted in the last syllable.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no affiliation with the Complainant and has no authorization to use the Complainant’s trademark.

The Complainant states that the Respondent has registered and used the disputed domain name with intent to trade on reputation of the Complainant and its SYNGENTA trademark.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “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.”

As noted in many previous UDRP panel decisions, a respondent’s default (*i.e.*, failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A complainant must prove each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely 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

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

As noted by many UDRP panels, if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant proved that it holds registered rights in the trademark SYNGENTA, and for the purpose of this proceeding the Panel establishes that the Complainant's IR No. 732663 and US Trademark Registration No. 3036058 satisfy the requirement of having trademark rights for the purpose of the Policy.

Having determined that the Complainant has trademark rights in the SYNGENTA mark, the Panel next assessed whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#) "[t]he standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name."

According to section 1.11.1 of the [WIPO Overview 3.0](#) "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc', or '.xyz' in this case) is viewed as a standard registration requirement and as such is disregarded under the first element confusingly similar test."

Save for the omission of the last letter "a", the disputed domain name comprises the entirety of the Complainant's SYNGENTA trademark.

According to section 1.9 of the [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 the purposes of the first element".

The Panel finds that the disputed domain name <syngent.xyz> is confusingly similar to the SYNGENTA trademark of the Complainant and that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;

- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds prior rights in the globally registered SYNGENTA trademark.

The Respondent has no affiliation with the Complainant and has not been authorized to use its SYNGENTA trademark in any way. The Complainant's use of and prior rights in the SYNGENTA trademark precede the date of registration of the disputed domain name, which is a misspelled variant of the Complainant's trademark.

According to section 2.1 of the [WIPO Overview 3.0](#) while 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 often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent.

Instead of addressing the Complainant's contentions, the Respondent defaulted and failed to respond to the Complaint and to the Complainant's cease-and-desist notice, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant's *prima facie* case.

There is no indication before the Panel of any activity in relation to the disputed domain name that would give rise to rights or legitimate interests in the Respondent.

The disputed domain name originally resolved to an error message website. After the Complainant sent a cease-and-desist notice to the Respondent, the Respondent, instead of addressing the Complainant's contentions, appears to have re-routed the disputed domain name to an unrelated marketing content website. This conduct in view of the Panel is not sort of reaction one would expect from a respondent acting in good faith and does not qualify as use of the disputed domain name in connection with a *bona fide* offering of goods prior to notice of the dispute within the meaning of paragraph 4(c)(i) of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the Panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- "(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The SYNGENTA trademark is distinctive and unique to the Complainant. A basic Internet search with regards the disputed domain name returns the Complainant and its businesses. These facts, coupled with the Complainant's global use of its SYNGENTA trademark lead the Panel to conclude that the Respondent knew, or at least should have known that the disputed domain name it registered would be confusingly similar to the Complainant's trademark.

In the Panel's opinion it is unlikely that the Respondent registered the disputed domain name for any reason other than to target the Complainant's global trademark by confusing Internet users expecting the disputed domain name to resolve to a website owned by, operated by, or affiliated with the Complainant. If it had, it is reasonable to expect from a good faith Respondent to provide explanation and evidence to the contrary, which the Respondent ignored. This is a fraudulent conduct as such, and in accordance with paragraph 4(b)(iv) of the Policy evidence of registration and use of the dispute domain name in bad faith.

The courier package the Center sent to the Respondent could not be delivered because the physical address that the Respondent provided was not a valid address. It appears that the Respondent has deliberately given false contact information in order to frustrate the proceeding, which is further indicative of the Respondent's bad faith.

The fact that the disputed domain name currently does not resolve to an active website does not alter the Panel's conclusion. According to section 3.3 of the [WIPO Overview 3.0](#), passive holding of a disputed domain name does not prevent a finding of bad faith.

The Panel finds that the disputed domain name was registered and is being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

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 <syngent.xyz> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: June 14, 2022