

ADMINISTRATIVE PANEL DECISION

Bunge SA v. Joel Fisher
Case No. D2023-5346

1. The Parties

The Complainant is Bunge SA, Switzerland, represented by 101domain.com, United States of America ("United States").

The Respondent is Joel Fisher, United States.

2. The Domain Name and Registrar

The disputed domain name <bungeloder.com> is registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 2023, the 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 Center verified that 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 January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 25, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on February 5, 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's group, founded over 200 years ago, provides agricultural products. The group operates some 300 facilities in more than 40 countries with over 20,000 employees.

The group trades under the marks BUNGE and BUNGE LODERS CROKLAAN, amongst others, and it operates websites at "www.bunge.com" and "www.bungeloders.com".

The Complainant owns Swiss trade mark No. P-542695 for BUNGE, registered on February 13, 2006, in classes 4, 5, 29, 30, 31, 32, 35, 36, 39 and 40.

Another (apparent) group company, Bunge Limited, owns Chinese trade mark No. 52273782 for BUNGE LODERS CROKLAAN, registered on August 21, 2021, in class 40.

The disputed domain name was registered on August 24, 2023.

There is no evidence or indication that the Respondent has used the disputed domain name for an active website. However, MX records have been configured enabling use of the disputed domain name for email and the disputed domain name has generated a phishing security flag.

The Respondent did not reply to the Complainant's cease and desist letters sent on October 11 and 19, 2023.

5. Parties' Contentions

A. Complainant

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

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

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 trade mark 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 Swiss trade mark No. P-542695 for BUNGE for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

While Chinese trade mark No. 52273782 for BUNGE LODERS CROKLAAN is owned by a different entity to the Complainant, it appears to be part of the same corporate group. In these circumstances, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel thinks it reasonable to infer that the Complainant has rights in this trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), sections 1.2.1 and 1.4.1.

The entirety of the mark BUNGE is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to this mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark BUNGE LODERS CROKLAAN is recognisable within the disputed domain name, which consists of “bunge”, the first term in the Complainant’s highly distinctive mark, as well as “loder”, which appears to be a misspelling of the second term in the mark. See further in section 6C below.

Accordingly, the disputed domain name is confusingly similar to this mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

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 recognised 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.

As to paragraph 4(c)(i) of the Policy, the disputed domain name is inactive and therefore not being used for a bona fide offering of goods or services. Nor is there any evidence that it ever has been.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

Furthermore, panels have held that the use of a domain name for illegal activity (here, claimed phishing) 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

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 found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel considers that the following circumstances are indicative of passive holding in bad faith:

1. the distinctiveness of the Complainant's marks;
2. the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use; and
3. the implausibility of any good faith use to which the disputed domain name may be put.

Furthermore, panels have held that the use of a domain name for illegal activity (here, claimed phishing) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Respondent has not appeared in this proceeding to contest such assertions by the Complainant or to deny that the disputed domain name constitutes a misspelling of (part of) the Complainant's mark.

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 <bungeloder.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: February 16, 2024