

ADMINISTRATIVE PANEL DECISION

Shamrock Food Company v. Name Redacted Case No. D2024-0141

1. The Parties

The Complainant is Shamrock Food Company, United States of America ("United States"), represented by Polsinelli PC Law firm, United States.

The Respondent is Name Redacted.¹

2. The Domain Names and Registrar

The disputed domain names, <shamrockfoodinc.com> and <shamrockfoodus.com>, are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 12, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 15, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld For Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on January 22, 2024.

The Center verified that the Complaint together with 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").

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name, <shamrockfoodus.com>. 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 January 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 11, 2024. The Respondent did not submit any formal response. The Center received an email on January 25, 2024, from a third party claiming that they received the Written Notice for these proceedings, but that they were not associated with the disputed domain names. The Center notified the Commencement of Panel Appointment Process on February 12, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on February 19, 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 manufactures and distributes food and food-related products, dairy, and foodservice. The Complainant has used the SHAMROCK FOODS trademarks in connection with its business since it was established in 1922.

The Complainant has trademark registrations for marks incorporating SHAMROCK FOODS in the United States and abroad. Below is a list of some of the Complainant's trademark registrations in the United States:

- SHAMROCK FOODS COMPANY (United States Trademark Registration Number 1618160, registered on October 16, 1990);
- SHAMROCK FOODS COMPANY AND DEVICE (United States Trademark Registration Number 1629594, registered on December 25, 1990);
- RESTAURANT 360 BY SHAMROCK FOODS (United States Trademark Registration Number 5623945, registered on December 4, 2018);
- MENU STUDIO BY SHAMROCK FOODS (United States Trademark Registration Number 6897058, registered on November 8, 2022); and
- MENU STUDIO BY SHAMROCK FOODS and Device (United States Trademark Registration Number 6897059, registered on November 8, 2022).

The disputed domain name <shamrockfoodinc.com> was registered on January 10, 2024, and the disputed domain name <shamrockfoodus.com> was registered on November 28, 2023. Neither is connected to any active website.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the SHAMROCK FOODS based marks in which the Complainant has rights. Namely, the Complainant contends that the disputed domain names incorporate the SHAMROCK FOOD portion of the Complainant's trademarks and that the additional elements do not dispel confusing similarity.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names and confirms that it has not authorized or licensed rights to the Respondent in any respect. With respect to the disputed domain name <shamrockfoodinc.com>, the Complainant contends that the registrant is indicated as an individual with an extremely similar name as the Complainant, but that the Complainant does not have any employee by this name, and that the Complainant has never registered the disputed domain name <shamrockfoodinc.com>. The Complainant explains that the disputed domain names <shamrockfoodinc.com> and <shamrockfoodus.com> were both used in a phishing scheme which is not legitimate noncommercial or fair use of the disputed domain names.

Finally, the Complainant contends that the disputed domain names were registered and used in bad faith. The Complainant states that based on the very close misspelling of the Complainant's trademark in the disputed domain names, it is clear that the Respondent was well aware of the Complainant at the time of registration of the domain names, and that the Respondent's motivation was to capitalize on or otherwise take advantage of the Complainant's trademarks and to further a scheme against the Complainant.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Center received an email on January 25, 2024, from a third party claiming that they received the Written Notice for these proceedings, but that they were not associated with the disputed domain names.

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that both disputed domain names were used in same manner, namely, sending emails to the Complainant's vendors while posing as an employee of the Complainant with the same name in order to further a phishing scheme. Therefore, the Panel is of the opinion that the two disputed domain names are subject to common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 3.0](#), section 1.7. The 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 Panel finds the mark is recognizable within the disputed domain names. Specifically, the disputed domain names incorporate the distinctive portion of the Complainant's mark – SHAMROCK FOOD. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms in the disputed domain names, “inc” and “us”, 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 names 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 names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity – phishing in the subject case – 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 the Respondent sent emails to the Complainant’s vendors from email addresses generated from the disputed domain names, passing itself off as an employee of the Complainant, with the signature line displaying the Complainant’s logo, address, and name. Given the confusing similarity between the disputed domain names and the Complainant’s trademarks, the Respondent surely registered the disputed domain names with the specific intention of perpetuating fraud through the use of the disputed domain names. Considering the circumstances, it is quite clear that the Respondent has intentionally attempted to attract, likely for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

Panels have held that the use of a domain name for illegal activity, for instance, here, phishing, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain names 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 names, <shamrockfoodinc.com> and <shamrockfoodus.com>, be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: March 5, 2024