

## ADMINISTRATIVE PANEL DECISION

SundaeSwap Labs, Inc. v. solana art  
Case No. D2022-0231

### 1. The Parties

Complainant is SundaeSwap Labs, Inc., United States of America (“United States”), represented by Much Shelist PC, United States.

Respondent is solana art, United States.

### 2. The Domain Name and Registrar

The disputed domain name <sundaeswap.tech> is registered with CloudFlare, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2022. On January 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 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 Complainant on February 8, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 8, 2022.

The Center verified that the Complaint, together with the 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 4, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on March 10, 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**

Complainant, SundaeSwap Labs, Inc., is a provider of cryptocurrency services and, in particular, operates a decentralized exchange on the Cardano blockchain that allows users to engage in cryptocurrency transactions and related functions. Complainant owns and operates a website at <sundaeswap.finance> through which users can connect their cryptocurrency wallet to engage in cryptocurrency transactions through Complainant's decentralized exchange.

Complainant asserts that it uses the name and mark SUNDAESWAP for its cryptocurrency services. Complainant launched its SUNDAESWAP decentralized exchange on January 20, 2022. Complainant owns two pending trademark applications in the United States for the SUNDAESWAP mark (Application Nos. 90878036 and 90878068) in connection with its goods and services. These were filed on August 11, 2021 on an intent to use basis. On October 26, 2021, Complainant filed amendments in its applications to allege use of the SUNDAESWAP mark in which Complainant claimed a date of first use in commerce of April 1, 2021. The applications have yet to mature to registration and are still pending.

Respondent registered the disputed domain name on January 20, 2022. Respondent then either posted a website at the disputed domain name using the subdomain <exchange.sundaeswap.tech> that essentially copied Complainant's website. The disputed domain name does not currently resolve to an active website or page.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant asserts that it owns common law or unregistered rights in the SUNDAESWAP mark by virtue of its extensive use and promotion of its SUNDAESWAP mark for many months before the launch of its decentralized exchange on January 2022 and as shown through its trademark applications for the SUNDAESWAP mark which claim a first use date of April 1, 2021.

Complainant argues that the disputed domain name is identical to the SUNDAESWAP mark as it fully consists of the SUNDAESWAP mark.

Complainant contends that Respondent does not have rights or legitimate interests in the disputed domain name as Respondent (i) has used the disputed domain name fraudulently by posting a website at the disputed domain name that imitates Complainant's website at <sundaeswap.finance>, (ii) has no connection to Complainant, (iii) has not been authorized by Complainant to use the SUNDAESWAP mark, and (iv) is not commonly known by the disputed domain name.

Lastly, Complainant asserts that Respondent has registered and used the disputed domain name in bad faith as Respondent registered the disputed domain name after Complainant established robust common law rights in the SUNDAESWAP mark and then on the very day Complainant launched its SUNDAESWAP decentralized exchange posted a website that fraudulently imitates Complainant's website at <sundaeswap.finance>.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Here, although Respondent has failed to respond to the Complaint, the default does not automatically result in a decision in favor of Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. A Panel, however, may draw appropriate inferences from a respondent's default in light of the particular facts and circumstances of the case, such as regarding factual allegations that are not inherently implausible as being true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

### A. Complainant's Trademark Rights in the SUNDAESWAP mark

The Panel is satisfied that Complainant has provided sufficient evidence that at the time of the filing of this Complaint, Complainant had established common law rights in the SUNDAESWAP mark, particularly in light of Complainant's launch of its SUNDAESWAP decentralized exchange on January 20, 2022 and the subsequent recognition it received thereafter from the cryptocurrency industry and consumers of such services. The remaining question before the Panel is whether Complainant has established that it owned an unregistered or common law mark in SUNDAESWAP before Respondent registered the disputed domain name on January 20, 2022, a question that has an impact for the purposes of the analysis of the registration of the disputed domain name in bad faith under the third element of the Policy.

While Complainant's trademark applications for the SUNDAESWAP mark now contain claims of first use in commerce going back to April 1, 2021, the applications were originally filed on an intent to use basis on August 11, 2021. Complainant does not explain this discrepancy or why Complainant filed intent to use applications if in fact the SUNDAESWAP mark was in use since April 1, 2021. To be sure, that claimed first use date does not per se establish when Complainant secured common law or unregistered rights in the SUNDAESWAP mark as a mark associated with Complainant or its services. Consequently, the Panel does not consider the two pending applications as proof that Complainant owned common law or unregistered rights in its SUNDAESWAP mark prior to the date of the registration of the disputed domain name.<sup>1</sup>

That being said, the Complainant's applications do provide some evidence of when Complainant may have started using the SUNDAESWAP mark in commerce. The specimen filed with Complainant's amendments to allege use as of April 1, 2022, suggests that Complainant was offering software products and tool kits to develop smart contracts at that time. The specimen, however, does not show use of the SUNDAESWAP mark with an actual software product or service. Notably, Complainant does not provide any evidence of any actual software products or services under the SUNDAESWAP mark being delivered to or used by consumers at that time. What evidence Complainant has submitted shows that Complainant was developing and testing its SUNDAESWAP products for months before the launch of the decentralized exchange on January 20, 2022. For example, Complainant has submitted a series of regular "Technical Progress Updates" that appeared on Medium.com and which highlighted the status of the work of Complainant and its technical team accomplished on Complainant's SUNDAESWAP products and services. Complainant has

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<sup>1</sup> It is worth noting that Complainant owns a third United States trademark application for its claimed SUNDAESWAP mark in connection with its cryptocurrency exchange (Application No. 90878057). That application was also filed on August 11, 2021 on an intent to use basis. While Complainant later filed an amendment to allege first use in commerce of the mark on April 1, 2021, Complainant subsequently filed an amendment to correct the alleged first use date to January 21, 2022, a day after Complainant's decentralized exchange was launched.

also provided evidence from various social media and discussion groups showing its use of the SUNDAESWAP name and mark in connection with its upcoming SUNDAESWAP decentralized exchange and related products.

Reviewing the evidence provided by Complainant while it is not clear to the Panel that Complainant was making technical trademark use of the SUNDAESWAP mark with actual products and services being offered or distributed to consumers in 2021 (which would explain the intent to use filings in August 2021), Complainant was certainly making use of its SUNDAESWAP mark in a regular or recurring way so that consumers would be aware that the Complainant was in the process of offering goods and/or services under the SUNDAESWAP brand. Such use amounted to use analogous to trademark use, a concept that holds that a party may have secured rights in a mark before technical trademark use has commenced through advertising or similar pre-sale activities that has created the necessary source association in the mind of consumers.

Here, Complainant's evidence clearly shows this consumer association given that since April 2021 Complainant was publicly promoting and testing its SUNDAESWAP products and services and regularly communicating with its target market. Given the number of followers Complainant received through its various communication channels, the numerous third party articles concerning Complainant and its SUNDAESWAP products and decentralized exchange, and other recognition Complainant received, it is evident that the relevant public of consumers interested in cryptocurrency products and services associated the SUNDAESWAP mark with Complainant well before the launch of Complainant's SUNDAESWAP decentralized exchange and the registration of the disputed domain name on January 20, 2022..

### **B. Identical or Confusingly Similar**

With Complainant's rights in the SUNDAESWAP mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level Domain ".tech") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's SUNDAESWAP mark as it fully and solely consists of the SUNDAESWAP mark. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's SUNDAESWAP mark and in showing that the disputed domain name is confusingly similar to that trademark.

### **C. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the evidence submitted in this proceeding, it appears that Respondent registered the disputed domain name for purposes of impersonating Complainant in furtherance of some scheme for Respondent's profit. Complainant has provided evidence that Respondent registered the disputed domain name on the same day Complainant publicly launched its SUNDAESWAP decentralized exchange on January 20, 2022, and then used the disputed domain name with a website that copies Complainant's website at <sundaeswap.finance>. Simply put, Respondent's use of the disputed domain name to impersonate Complainant appears deceitful and cannot constitute a legitimate interest or evidence a *bona fide* right or use.

Given that Complainant has established with sufficient evidence that it owns rights in the SUNDAESWAP mark, and given Respondent's above noted actions and failure to appear in this proceeding, the Panel

concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

#### **D. Registered and Used in Bad Faith**

Given Respondent's actions as noted above, and its failure to appear in this proceeding, it is easy to infer that Respondent's registration and use of the disputed domain name has been done in bad faith. As previously discussed, the Panel notes that Complainant was publicly promoting and testing its SUNDAESWAP products and services and regularly communicating with its target market before the registration of the disputed domain name on January 20, 2022. Given that Respondent registered the disputed domain name on the same day Complainant launched its SUNDAESWAP decentralized exchange and then used the disputed domain name to post an indistinguishable copy of Complainant's website available at <sundaeswap.finance>, makes clear that Respondent opportunistically registered and used the disputed domain name in bad faith, for Respondent's profit or in furtherance of some fraudulent or nefarious scheme at the expense of Complainant.

Accordingly, the Panel finds that Complainant succeeds under this 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 <sundaeswap.tech> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: March 24, 2022