

ADMINISTRATIVE PANEL DECISION

Wild Goose Holding Co, Inc. and Wawa, Inc. v. Domain Administrator,
Fundacion Privacy Services LTD
Case No. D2022-0820

1. The Parties

The Complainants are Wild Goose Holding Co, Inc. and Wawa, Inc. (collectively “the Complainant”), United States (“United States”), represented by Caesar Rivise, PC, United States.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <mywawahub.com> is registered with Media Elite Holdings Limited dba Register Matrix (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2022. On March 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2022, 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 March 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 6, 2022.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on April 11, 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 Wild Goose Holding Co, Inc. (hereinafter “Wild Goose”) and Wawa Inc. (hereinafter “Wawa”) have entered into agreements whereby Wild Goose has granted Wawa a license to use various marks owned by Wild Goose including the mark WAWA. Thus, all use of the mark WAWA inures to the benefit of Wild Goose as a matter of law.

Wild Goose owns many federal trademark and service mark registrations in the United States for WAWA, including the following:

Trademark Registration No. 0890189 WAWA, registered on April 28, 1970 for dairy and other products;

Trademark Registration No. 1299708 WAWA, registered on October 9, 1984 for dairy and other products;

Trademark Registration No. 1761847 WAWA and design, registered on March 30, 1993 for retail convenience store services;

Trademark Registration No. 2343033 WAWA, registered on April 18, 2000 for motor vehicle service station services;

Trademark Registration No. 2819429 WAWA, registered on March 2, 2004 for fast food restaurant services;

Trademark Registration No. 3209740 WAWA, registered on February 13, 2007 for credit and card services.

Wawa is a leading retailer in the United States offering a large variety of goods and services and claims through its predecessor in interest to have used the name and mark WAWA for more than 110 years.

The disputed domain name <mywawahub.com> was registered on July 20, 2020 and resolves to a website with pay-per-click (“PPC”) links which forwards Internet users to third party websites.

5. Parties’ Contentions

A. Complainant

The Complainant claims that by virtue of the use and promotion of the mark WAWA for more than 110 years it has come to be recognized as identifying goods and services finding their origin exclusively in or otherwise uniquely associated with the Complainant.

In essence, the Complainant claims that the disputed domain name is confusingly similar to the trademark WAWA in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, but rather it is trading upon the fame and the good will of the Complainant with the intention of purporting to be associated with the Complainant and to an internal resource of Wawa, having a name similar to that of the disputed domain name, for the purpose of deceiving Wawa employees.

Such deception is with the intent of the Respondent to obtain login credentials of Wawa employees – *i.e.* “phishing” – and or to derive financial benefit by referring traffic to third party websites.

Finally, the Respondent requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

A. Identical or Confusingly Similar

As set forth in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's WAWA trademarks.

The disputed domain name <mywawahub.com> incorporates the Complainant's trademark WAWA in its entirety, with the addition of the words "my" and "hub", which certainly do not prevent a finding of confusing similarity.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademarks WAWA in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if the respondent has acquired no trademark or service mark rights; or

- the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proved that they are the owners of the WAWA mark. There is no indication that they have licensed or otherwise permitted the Respondent to use any of their trademarks, nor have they permitted the Respondent to apply for or use any domain name incorporating their mark.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

As established in section 2.5 of the [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry [...] Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation.”

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trade name and trademarks WAWA mentioned in section 4 above (Factual Background) when it registered the disputed domain name <mywawahub.com> on July 20, 2020. By that time, the Complainant had widely and intensely used the trademark WAWA for many years.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant’s trademark WAWA in its entirety and adding the words “my” and “hub” which rather than creating a useful distinction only contribute to increase confusion with the Complainant’s trademark WAWA, with the intention to confuse Internet users and capitalize on the fame of the Complainant’s trade name and trademarks for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name, the nature of the disputed domain name, the use of the disputed domain name to resolve to a website with PPC links to companies possibly competing with the Complainant, are all indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <mywawahub.com>, be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: April 25, 2022