

ADMINISTRATIVE PANEL DECISION

Bakkavor Foods Limited v. Privacy Service Provided by Withheld for Privacy ehf / Equitas Global
Case No. D2022-1244

1. The Parties

The Complainant is Bakkavor Foods Limited, United Kingdom, represented by Withers & Rogers LLP, United Kingdom.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Equitas Global, United Kingdom, self represented.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2022. On April 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 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 April 11, 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 April 12, 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 April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Response was filed with the Center on May 2, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 6, 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.

On May 13, 2022, the Complainant submitted an unsolicited supplemental filing.

4. Factual Background

The Complainant is a company registered in the United Kingdom. It is an international supplier of fresh prepared foods.

The Complainant is the owner of various trademark registrations including the following:

- United Kingdom trademark registration number 3431717 for the word mark BAKKAVOR, registered on December 20, 2019

- United Kingdom trademark registration number 3431736 for the figurative mark depicted below, also registered on December 20, 2019:



The disputed domain name was registered on February 17, 2022.

The disputed domain name has resolved to a website at “www.bakkavorcruelty.com”. The website is headed “Filth and Cruelty from Bakkavor – A shocking look at Bakkavor’s global egg supply chain”. The website prominently displays the following image (the “Respondent’s Logo”):



The website contains criticism of the farming methods used in the production of eggs said to be used by the Complainant and includes a video which also displays the Respondent’s Logo. It invites visitors to sign a petition addressed to the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to its trademark BAKKAVOR. It states that the additional term “cruelty” is non-distinctive and should be discounted from the relevant comparison.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends that it has never licensed or permitted the Respondent to use its trademark

BAKKAVOR, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It states that the Respondent is using the disputed domain name in connection with a targeted campaign intended to bring the Complainant into disrepute and disrupt its business. It states that the Respondent is running similar campaigns against other well-known brands, which evidences a pattern of bad-faith domain name registrations. The Complainant contends that the Respondent's Logo is misleading as combining the Complainant's word and figurative trademarks in a manner that is designed to imitate or mimic the Complainant's branding. The Complainant submits that the Respondent is using the disputed domain name misleadingly to attract Internet users to its website.

B. Respondent

The Respondent submits that it is a charitable group whose mission is to prevent food safety risks and animal cruelty in international markets. It states that a specific area of its programming involves encouraging egg producers to move away from "caged egg" production, which it believes to be cruel and to pose health risks. It states that egg production by this method is banned in over 30 countries including the whole of the European Union and the United Kingdom. The Respondent says that, unlike many other leading food producers, the Complainant has failed to commit to timeline for using only cage-free eggs in its global supply chain. It states that it attempted to engage with the Complainant about this in 2021 but was continually ignored. It submits that it set up the website linked to the disputed domain name in order to educate the Complainant's customers and the general public about the practices in question and to publicly criticize the Complainant for its failure properly to address discrimination, food safety, and animal cruelty.

The Respondent accepts that the disputed domain name is confusingly similar to the Complainant's trademark BAKKAVOR for the purposes of paragraph 4(a)(i) of the Policy.

The Respondent submits that it has rights or legitimate interests in respect of the disputed domain name as contemplated by paragraph 4(c)(iii) of the Policy as it 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 Respondent states that it is a charitable group making fair use of the disputed domain name which was registered for the purpose of public criticism in line with its charitable mission. The Respondent refers to section 2.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which discuss circumstances beyond the disputed domain name itself to which panels may have regard in assessing the issue of fairness. Those criteria, and the Respondent's relevant submissions with respect to each of them, are as follows:

(i) Whether the domain name has been registered and is being used for legitimate purposes and not as a pretext for commercial gain or other such purposes inhering to the respondent's benefit: The Respondent says that the disputed domain name has been used exclusively for the stated charitable purpose and involves no pretext for, or actual, commercial gain. It states that there is no advertising on the relevant website and that it has never offered the disputed domain name for sale. The Respondent states that has not even solicited donations to support its charitable mission, even though it would be permissible to do so.

(ii) Whether the respondent reasonably believes its use (whether referential, or for praise or criticism) to be truthful and well-founded: The Respondent says that the criticism on the website is supported by clear and compelling evidence and relates to the Complainant's own public statements concerning its egg procurement policies.

(iii) Whether it is clear to Internet users visiting the respondent's website that it is not operated by the complainant: The Respondent says that it is immediately clear that the website is not operated by the Complainant and is a site intended to highlight criticism of the Complainant's business practices and explicitly states that it is run by a charitable group.

(iv) Whether the respondent has refrained from engaging in a pattern of registering domain names corresponding to marks held by the complainant or third parties: The Respondent acknowledges that it has launched similar public criticism websites concerning other food companies, which have related in all cases to food safety and animal cruelty issues and which support the fact that the Respondent is making fair use of the domain names in question.

(v) Where appropriate, whether a prominent link (including with explanatory text) is provided to the relevant trademark owner's website: The Respondent states that its website contains a link to the Respondent's own website. However, the Panel could see only a link to an email address, "[...].@equitasglobal.org".

(vi) Whether senders of email intended for the Complainant but (because of user confusion) directed to the respondent are alerted that their message has been misdirected: The Respondent states that there has been no email confusion and no allegation of any such confusion by the Complainant.

(vii) Whether there is an actual connection between the Complainant's trademark in the disputed domain name and the corresponding website content, and not to a competitor, or an entire industry, group, or individual: The Respondent submits that there is a clear connection between the Complainant's trademark and the content of the website, that other food companies are mentioned only incidentally and that there is no direction to, or promotion of, any competitor of the Complainant.

(viii) Whether the domain name registration and use by the Respondent is consistent with a pattern of *bona fide* activity (whether online or offline): The Respondent contends that it engages in a variety of activities both online and offline to call attention to the Complainant's practices and to demand change.

The Respondent denies that it registered or has used the disputed domain name in bad faith. It states that none of the scenarios envisaged by paragraph 4(b) of the Policy as indicating bad faith are applicable in this case. The Respondent states that it is not a competitor of the Complainant and is not making any commercial gain from its use of the disputed domain name. It reiterates that it is a charitable group using the disputed domain name exclusively for the purpose of educating the public about food safety and animal cruelty issues and argues that legitimate public criticism is the opposite of acting in bad faith.

C. Complainant's Unsolicited Supplemental Filing

The Complainant has filed an unsolicited supplemental filing, in which it submits that it had publicly committed to ending caged egg production by 2025 and that the Respondent was aware of that commitment. It also exhibits an email from the Respondent dated May 5, 2022, which includes a statement that, should the Complainant succeed in this proceeding, the Respondent has created backup websites with identical content but excluding the Complainant's trademark. The Complainant submits that, by virtue of these matters, the Respondent cannot have had reasonable belief that the content of its website was truthful and well founded, and also that is clear that the Respondent is pursuing a bad-faith campaign aimed at tarnishing the Complainant's trademark.

As discussed in section 4.6 of [WIPO Overview 3.0](#), panels are generally reluctant to accept unsolicited supplemental filings from the parties, save in circumstances where the submitting party can demonstrate some exceptional reason why it could not have provided the relevant information in its initial complaint or response. In this case, the Panel can see no reason why the Complainant could not have made reference in its Complaint to any public commitment on its part to ending caged egg production by a particular date. Nor does the Panel consider the email which the Complainant has exhibited to provide compelling new evidence of bad faith on the Respondent's part. In those circumstances, the Panel declines to admit the Complainant's unsolicited supplemental filing.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to 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 has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights for the name and mark BAKKAVOR. The disputed domain name wholly incorporates that trademark together with the additional term “cruelty” which does not prevent the trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent contends that it meets the requirement set out in paragraph 4(c)(iii) of the Policy for establishing rights or legitimate interests, namely: “you are 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.” It refers in this regard to the guidance provided in section 2.5 of the [WIPO Overview 3.0](#) and submits that its use of the disputed domain name for the purpose of its relevant website meets all the criteria that are there discussed.

Having considered the parties’ submissions and the relevant website content, the Panel finds that the Respondent has met the requirements to establish rights or legitimate interests as contemplated by paragraph 4(c)(iii) of the Policy. In particular:

1. The Panel finds that the Respondent’s website constitutes a genuine criticism site aimed at challenging the Complainant’s alleged tolerance of “caged egg” production in its global supply chain on the grounds of food safety and animal welfare. The Panel further finds that the Respondent reasonably believes its views are well-founded. While the Panel has declined to admit the Complainant’s unsolicited supplemental filing in this regard, it notes that in the email dated May 5, 2022, exhibited by the Complainant, the Respondent argues that the Complainant’s public statement addressed only its United Kingdom market and not its significant operations in the United States of America and China.
2. The Panel does not find that the Respondent’s website is a pretext for commercial gain, that it is intended to favour any competitor of the Complainant, or has any purpose other than to criticize the Complainant’s business practices in furtherance of the Respondent’s charitable aims.
3. The Panel does not find the disputed domain name to be inherently misleading. The disputed domain name does not comprise the Complainant’s trademark alone, but combines that trademark with the word “cruelty”, which the Panel finds likely to convey to any reasonable Internet user that it is operated by a party other than the Complainant itself¹. The Panel is not of the view, therefore, that Internet users would be likely to visit the Respondent’s website in the mistaken belief that it is operated or authorized by the Complainant.

¹ See e.g. section 2.6.3 of the [WIPO Overview 3.0](#) which states: “Where the domain name is not identical to the complainant’s trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false.”

4. Nor does the Panel consider content of the Respondent's website to be misleading. While the website refers to the Complainant's trademark BAKKAVOR, it does so explicitly in the context of criticizing certain of the Complainant's business practices and does not represent in any manner that it is operated by or affiliated with the Complainant. While the incorporation of the Complainant's figurative trademark into the Respondent's Logo is arguably provocative, the Panel is of the view that the effect of this is further to identify the Complainant and not to misrepresent the ownership or operation of the Respondent's website.

The Panel finds in the circumstances that the Complainant has failed to establish the second element of the Policy. Since the Complainant must establish all three elements under paragraph 4(a) of the Policy in order to succeed, the Complaint therefore necessarily fails.

C. Registered and Used in Bad Faith

In the light of the Panel's findings in respect of rights or legitimate interests, above, it is unnecessary to proceed to a detailed consideration of the third element under paragraph 4(a) of the Policy. The Panel notes, however, that for substantially the same reasons as are set out above, it does not consider that the disputed domain name has been registered or has been used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 16, 2022