

ADMINISTRATIVE PANEL DECISION

Papa Gyros, Inc. v. Registration Private, Domains By Proxy, LLC /

GEORGIOS BATSIOS

Case No. D2022-2256

1. The Parties

Complainant is Papa Gyros, Inc., United States of America (“United States”), represented by Renner Kenner Greive Bobak Taylor & Weber, United States.

Respondent is Registration Private, Domains By Proxy, LLC, United States / GEORGIOS BATSIOS, United States, represented by Brown Patent Law, United States.

2. The Domain Name and Registrar

The disputed domain name <pappagyros.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2022. On June 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 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 June 28, 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 June 30, 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022.

Upon Respondent's request, pursuant to paragraph 5(b) of the Rules, the Center extended the due date for filing the Response to July 31, 2022. The Response was filed with the Center on July 31, 2022.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on August 23, 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 is a company based in the state of Ohio, in the United States. Complainant owns United States Trademark Registration No. 2752532 for the mark PAPA GYROS, which Complainant uses in connection with its restaurant services. The registration was issued on August 19, 2003, and contains a disclaimer of the term "Gyros."

The disputed domain name was registered on May 16, 2017. The disputed domain name is linked to an active website through which Respondent advertises and communicates with consumers about its restaurant services offered under the name "Pappa Gyros" in the state of Texas, in the United States. Respondent further has a business license, issued by the Secretary of State of Texas on June 22, 2015, to operate under the trade name "Pappa Gyros." Respondent has no affiliation with Complainant, nor any license to use its marks.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant's trademark, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns a registration for the PAPA GYROS mark, which Complainant uses in connection with its restaurant services in the United States, and which is included in Complainant's own domain name <papagyros.com> which "has been maintained since at least July 10, 2006."

Complainant contends that Respondent has similarly incorporated Complainant's PAPA GYROS mark into the disputed domain name, which "differs only in the addition of the letter 'p.'" Complainant contends that although "Respondent is using the [disputed domain name] to host a website that advertises and sells restaurant services," this is "not a legitimate noncommercial or fair use" of the disputed domain name. Finally, Complainant contends that Respondent has registered and is using the disputed domain name in bad faith, having simply registered the disputed domain name for its own commercial gain. In particular, Complainant contends that although Respondent "accepts online orders" via the disputed domain name, this is merely "an effort to garner a free-ride off of the goodwill associated with" Complainant.

B. Respondent

Respondent contends that (i) the disputed domain name is not identical or confusingly similar to Complainant's trademarks, (ii) Respondent has rights or legitimate interests in the disputed domain name; and (iii) Respondent did not register and is not using the disputed domain name in bad faith.

Respondent contends that the disputed domain name differs from Complainant's registered PAPA GYROS mark, since "Complainant disclaimed GYROS and cannot enforce it." Further, Respondent asserts that the added letter "p" in the term "pappa" changes its meaning to "daddy" as compared to the Complainant's use of "papa" to signify "pope". Respondent further contends that any rights Complainant has in its mark are

weakened by third-party use for various restaurants in the United States.

Respondent contends that he has rights or legitimate interests in the disputed domain name, since he owns and operates a restaurant under the trade name “Pappa Gyros”, with a license from State of Texas “since at least 2015.” Respondent alleges that his “Pappa Gyros” restaurant has received numerous awards as well as unsolicited media attention over the years. Finally, Respondent contends that he did not register and is not using the disputed domain name in bad faith, but rather that Respondent is operating a “legitimate” and licensed business by the name “Pappa Gyros”, and has been doing so for years.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel must first determine whether the disputed domain name <pappagyros.com> is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

The Panel finds that it is. The disputed domain name is likely to be viewed as highly similar to Complainant’s PAPA GYROS mark. The addition of an additional letter “p” does not prevent a finding of confusing similarity and the disputed domain name is likely to be perceived by consumers as having a similar appearance, and a perhaps even identical pronunciation, connotation, and commercial impression. Further to section 1.9 of the [WIPO Overview 3.0](#), prior UDRP panels have found that the mere addition of a letter to a trademark does not prevent a finding of confusing similarity, since the domain name still contains sufficiently recognizable aspects of the trademark. Accordingly, regardless of the difference in meaning between the terms “papa” and “pappa”, the trademark PAPA GYROS remains recognizable within the disputed domain name.

The Panel therefore finds that Complainant has satisfied the first UDRP element, in showing that the disputed domain name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph (4)(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel next considers whether Complainant has shown that Respondent has no “rights or legitimate interests,” as must be proven to succeed in a UDRP dispute. Paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include:

- (i) use of the domain name “in connection with a *bona fide* offering of goods or services”;
- (ii) demonstration that respondent has been “commonly known by the domain name”; or
- (iii) “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”.

Respondent has submitted ample evidence that he operates a legitimate, award-winning restaurant in the State of Texas under the trade name “Pappa Gyros”, the exact term contained in the disputed domain name. Respondent has further submitted evidence that he has a business license, issued by the Secretary of State of Texas on June 22, 2015, to operate under the trade name “Pappa Gyros.” Finally, Respondent has submitted evidence that he has operated his restaurant business under name “Pappa Gyros” continuously since 2015, and via his website associated with the disputed domain name <pappagyros.com> since at least 2017.

Therefore, although Respondent has no license from, or other affiliation with, Complainant, the Panel finds that Respondent has provided sufficient evidence of his “rights or legitimate interests” in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy. Complainant cannot prevail in this UDRP proceeding without establishing Respondent’s lack of “rights or legitimate interests” in the disputed domain name. Nevertheless, for completeness, the Panel proceeds with an analysis of the third element.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides examples of evidence that may indicate “bad faith” registration and use of a disputed domain name. These include:

- (i) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the disputed domain name; or
- (ii) that Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Complainant has not carried its burden of proving that Respondent registered and used the disputed domain name in bad faith within the meaning of the Policy. Rather, it is evident that Respondent has been operating a restaurant business legally and with permission from the State of Texas from 2015 to the present, during which time Respondent has openly used the trade name “Pappa Gyros,” the exact term contained in the disputed domain name. The record further indicates that consumers regularly use the name “Pappa Gyros” to refer to Respondent’s business. Respondent has received significant positive reviews from consumers over the years for its “Pappa Gyros” restaurant services, and Respondent’s “Pappa Gyros” restaurant services have been commended in various news articles in Texas continuously since at least 2017.

By Complainant’s own admission, Respondent uses the disputed domain name to advertise Respondent’s “Pappa Gyros” restaurant services, and to accept online orders from customers under the “Pappa Gyros” brand. There is no indication in the record that Respondent undertook these actions in a bad faith effort to confuse or divert consumers from Complainant. In summary, while Complainant has established rights to its registered PAPA GYROS mark, Respondent has equally established a legitimate use and lack of bad faith in its registration and use of the disputed domain name. Whether Complainant could make out a case for trademark infringement against Respondent in a court of law or other forum based on prior use of a confusingly similar mark is a separate inquiry, outside the contemplation of this UDRP proceeding.

The Panel finds that Complainant has failed to establish that Respondent registered and used the disputed domain name in bad faith under paragraph (4)(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Date: September 6, 2022