

## **ADMINISTRATIVE PANEL DECISION**

### **ANZCO Foods v. VASQUES De Oliveira MARCOS ALBERTO** **Case No. D2023-4102**

#### **1. The Parties**

The Complainant is ANZCO Foods, New Zealand, represented by PROTAKEDOWN PTE. LTD t/a PhishFort, Singapore.

The Respondent is VASQUES De Oliveira MARCOS ALBERTO, Brazil.

#### **2. The Domain Name and Registrar**

The disputed domain name <cmpfoods.com> is registered with Dreamscape Networks International Pte Ltd (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 2, 2023. On October 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2023, 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 October 9, 2023, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 10, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on October 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 1, 2023.

The Center appointed John Swinson as the sole panelist in this matter on November 3, 2023. 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 is a New Zealand business. A subsidiary of the Complainant was established under the name Canterbury Meat Packers Limited ("CMP") in August 1994 and changed its name to CMP Canterbury Limited in September 2004. The Complainant was once known as Canterbury Meat Packers, then as CMP Canterbury.

The Complainant currently owns the domain name <cmp.co.nz>. This domain name redirects to the Complainant's website at <anzcofoods.com>.

The Complainant and CMP use the CMP and CMP FOODS brands in connection with animal processing, and the export of premium meat products. The Complaint states that the Complainant and its subsidiaries have used CMP and CMP FOODS as trademarks in New Zealand and elsewhere continuously since 2000.

On September 19, 2000, CMP applied for a New Zealand trademark registration for "CMP" in logo format, but this application was abandoned. See Application No. 623378. On October 16, 2000, the Complainant filed a New Zealand trademark registration for the word mark "CMP" numbered 624998, and it was registered on April 19, 2001. Said registration was expired in 2018. The Complainant currently owns no relevant trademark registrations in respect of "CMP".

The disputed domain name was registered on June 17, 2023.

The Respondent did not file a Response, so little information is known about the Respondent. According to the Registrar's records, the Respondent has an address in Brazil.

At the time the Complaint was filed, the disputed domain name resolved to a website that gives the impression that it is a website operated by the Complainant. It uses the Complainant's prior address, copies content from the Complainant's website, and discusses New Zealand beef. The website at the disputed domain name also used other brands of the Complainant, such as the ANGEL BAY trademark owned by the Complainant.

The Complainant provided evidence of an invoice apparently sent by the Respondent to a customer of the Complainant that uses the branding and logo from the website at the disputed domain name, and states that the invoice is from CMP doing business as the Complainant. The invoice, for a significant amount of money, is for a product of the kind sold by the Complainant.

The Complainant successfully applied to the .nz Dispute Resolution Service to have the <cmpfoods.co.nz> and <anzcofood.co.nz> domain names transferred to the Complainant. See *Anzcofoods Ltd and CMP Canterbury Limited v Mirta Artemia Giaccaglia* [2023] NZDNC 1491 (18 August 2023). The Complainant states that the website at <cmpfoods.co.nz> website was exactly the same as the website at the disputed domain name in the present case. In this case, the Complainant had an address in Buenos Aires, Argentina.

At the present time, the disputed domain name does not resolve to an 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 name.

Notably, the Complainant contends that the disputed domain name is being used as part of a fraudulent invoice scam.

### B. Respondent

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

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 and is being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

### 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has established unregistered trademark or service mark rights in "CMP" for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. For example, the Complainant provided details of invoices and packing slips using "CMP" with a specific logo, in several instances along with the corporate name of its subsidiary. Moreover, the fact that the Respondent is shown to have been targeting the Complainant's mark, including using a logo reproducing "CMP" in its invoice for products similar to those of the Complainant, along with the corporate name of its subsidiary, supports the finding that its mark has achieved significance as a source identifier.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of the term "foods" does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often-impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. And see *Vattenfall AB v. James Carey*, WIPO Case No. [D2022-3206](#).

Based on the available record, 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 has used the disputed domain name as part of an invoice fraud scam, and has copied content from the Complainant’s website to the website at the disputed domain name. This demonstrates that the Respondent is aware of the Complainant and attempted to take advantage of the Complainant’s CMP trademark for illegal purposes.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) 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 name constitutes bad faith under 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 <cmpfoods.com> be transferred to the Complainant.

/John Swinson/

**John Swinson**

Sole Panelist

Date: November 17, 2023