

ADMINISTRATIVE PANEL DECISION

Sunkist Growers, Inc. v. Brian Hackworth
Case No. D2024-1527

1. The Parties

The Complainant is Sunkist Growers, Inc., United States of America (“United States”), represented by Markmonitor, United States.

The Respondent is Brian Hackworth, United States.

2. The Domain Name and Registrar

The disputed domain name <sunkistgrowers.com> is registered with Name Cheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2024, 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 (Redacted For Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024, 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 amended Complaint on April 16, 2024.

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 April 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 27, 2024.

The Center appointed Nels T. Lippert as the sole panelist in this matter on June 3, 2024. 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 an American citrus marketing cooperative composed of 6,000 members from California and Arizona headquartered in Valencia, California, engaged in the business of marketing fresh citrus fruit and processed citrus products throughout the world. It is the successor in interest, by change of name, to the California Fruit Growers Exchange, a cooperative of fruit growers, which was organized in 1905.

The Complainant is the owner of a number of registrations of the mark SUNKIST, including the following: United States Trademark No. 72087, for SUNKIST, registered on January 5, 1909; United States Trademark No. 4482629, for SUNKIST design, registered on February 11, 2014; United States Trademark No. 6937756, for SUNKIST design registered on December 27, 2022; Canadian Trademark No. TMDA13525, for SUNKIST, registered on March 23, 1909; European Union Trademark No. 000063313, SUNKIST, registered on October 5, 1998; and United Kingdom Trademark No. UK00000407563, for SUNKIST., registered on September 4, 1920.

The disputed domain name was registered on March 20, 2024, and does not resolve to an active website. The Complainant provided evidence on record that the disputed domain name is being used in connection with fraudulent emails.

The Complainant operates its activities through various domain names such as <sunkistgrowers.com> and <sunkist.com>.

The Respondent appears to be an individual with an address in the United States.

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 confusingly similar to the Complainant's trademark(s) because it simply adds a letter "s" indicating the possessive form of the SUNKIST trademark and the descriptive term "growers". The Complainant further notes that the Complainant's SUNKIST trademark is found entirely within the disputed domain name. Furthermore, the Complainant contends that the addition of the gTLD does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark. The Complainant additionally contends this is a classic example of typosquatting of the Complainant's domain name "Sunkistgrowers.com" which has been registered since 1998 and resolves to the Complainant's principal webpage "www.sunkist.com".

The Complainant states that the Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use its trademark or to seek registration of the disputed domain name. Nor is the Respondent commonly known by the name "sunkist", "sunkistsgrowers" or "sunkist's growers" or in any way affiliated with the Complainant.

The Complainant also alleges that its SUNKIST trademark is globally known because it has been used by the Complainant and its predecessors for more than 100 years. Therefore, the Complainant asserts that it is implausible that the Respondent was unaware of the Complainant and the Complainant's trademark rights when he registered the disputed domain name.

The Complainant further asserts the disputed domain name has been registered and is used as part of a phishing scheme. In particular, the Complainant asserts that the Respondent was using an email address with the extension “[...]@sunkistsgrowers.com” for the purpose of tricking the Complainant’s business partners to make payments to a bank account that does not belong to the Complainant. Therefore, the Complainant asserts that the disputed domain name is used in connection with fraudulent emails.

B. Respondent

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

6. Discussion and Findings

As noted above, the Respondent did not respond to the Complainant’s allegations. Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint. The Panel does not find any exceptional circumstance in this case.

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following:

- (i) The 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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

Although the addition of other terms here, the letter “s” and the term “growers” may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Furthermore, the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name does not affect the assessment of a domain name for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 here, claimed as applicable to this case: phishing, impersonation/passing off via fraudulent email scheme, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 is alleged to have registered and used the disputed domain name in a scheme to impersonate the Complainant and engage in a phishing activity to cause the Complainant’s partners to make payments to a third party that falsely resents itself as the Complainant or as being associated with the Complainant. The Complainant has presented evidence of such illegal activity. The Respondent has not rebutted this allegation and evidence. It is well established that the use of a domain name for per se illegitimate activity such as phishing can never confer rights or legitimate interests on a respondent and such behavior is manifestly considered evidence of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel notes that the Complainant owns the almost identical domain name <sunkistgrowers.com>. Furthermore, the Complainant provided evidence on record that the Respondent was using an email address based on the disputed domain name to send fraudulent emails to some Complainant’s business partners to invite them to make payments to a bank account that does not belong to the Complainant. Panels have held that the use of a domain name for illegal activity here, claimed as phishing, impersonation/passing off via fraudulent email scheme, 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.

The Panel finds that the Complainant has established the third 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 <sunkistsgrowers.com> be transferred to the Complainant.

/Nels T. Lippert/

Nels T. Lippert

Sole Panelist

Date: June 24, 2024