

ADMINISTRATIVE PANEL DECISION

Foster Poultry Farms LLC v. Abiola Abiola, Vickpoint Case No. D2024-4627

1. The Parties

The Complainant is Foster Poultry Farms LLC, United States of America (“United States”), represented by Mayer Brown LLP, United States.

The Respondent is Abiola Abiola, Vickpoint, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <fosterfarmsllc.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2024. On November 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Tucows, Inc., REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 14, 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 November 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 17, 2024.

The Center appointed Gregor Vos as the sole panelist in this matter on December 30, 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 a producer of inter alia poultry products and was founded in 1939. The Complainant is the owner of the domain name <fosterfarms.com> and sells its products worldwide.

The Complainant is the owner of inter alia the following trademark registrations (the "Trademarks"):

- United States trademark registration No. 1214225 for the wordmark FOSTER FARMS, registered on October 26, 1982;
- United States trademark registration No. 1475175 for the wordmark FOSTER FARMS, registered on February 2, 1988.

The Domain Name was registered on August 12, 2024, and resolves to website that mimics the Complainant's website and on which the Trademarks are used. Also, the Respondent uses the Domain Name to send e-mails using the name of an actual employee of the Complainant, purporting to be the Complainant.

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 Domain Name.

Notably, the Complainant first contends that the Domain Name is confusingly similar to its Trademarks, since it incorporates the Trademarks in their entirety with the mere addition of the indication "llc" that refers to a business' legal form and the generic Top-Level Domain ("gTLD") ".com" that is generally disregarded under the first element.

Second, the Complainant states that the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received authorization from the Complainant to use the Trademarks in the Domain Name and is not commonly known by the Domain Name. Also, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, but rather only uses the Domain Name for fraudulent purposes.

Finally, according to the Complainant, the Respondent was undoubtedly aware of the Trademarks when registering the Domain Name and is using the Domain Name in bad faith for fraudulent purposes.

B. Respondent

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

6. Discussion and Findings

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 Trademarks and the 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 the Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademarks is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "llc", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 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 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 phishing, impersonation, and fraudulent activities, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the composition of the Domain Name that includes the Trademarks in their entirety, the impersonating nature of the website to which the Domain Name resolves, and the distribution of fraudulent e-mails using the Domain Name demonstrate the Respondent's intention of taking unfair advantage of the likelihood of confusion between the Domain Name and the Complainant as to the origin or affiliation of the website to which the Domain Name resolves.

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.

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.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, impersonation and fraudulent activities 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 Domain Name constitutes bad faith under the Policy.

First, the Panel notes that the Trademarks were registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the impersonating nature of the website to which the Domain Name resolves, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business.

Second, the Complainant provided evidence that the Domain Name resolves to a website impersonating the Complainant and is used for sending fraudulent e-mails. The Panel finds that the Respondent uses the Domain Name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's Trademarks as to the source, sponsorship, affiliation, or endorsement of that Respondent's website which the Panel finds constitutes bad faith registration and use under paragraph 4(b)(iv) of 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 <fosterfarmsllc.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: January 10, 2025