

## **ADMINISTRATIVE PANEL DECISION**

Foster Poultry Farms DBA Foster Farms v. Withheld for Privacy ehf / Josh Miller  
Case No. D2022-2016

### **1. The Parties**

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

Respondent is Withheld for Privacy ehf, Iceland / Josh Miller, United States.

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

The disputed domain name <fosterfarmfoodservice.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 June 3, 2022. On June 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 3, 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 8, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint.

On June 9, 2022, Respondent sent an informal communication.

Complainant filed an amended Complaint on June 10, 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 June 15, 2022. In accordance with the Rules, paragraph 5, the due date

for Response was July 5, 2022. Respondent did not submit a formal response. Accordingly, the Center notified the Parties that it will proceed to Panel Appointment on July 6, 2022.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on July 11, 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 poultry company based in the United States. Complainant has been offering its poultry and related goods under the FOSTER FARMS mark since decades prior to the registration of the disputed domain name. In this regard, Complainant is the owner of several trademark registrations for its FOSTER FARMS mark in word form or as a composite word and design. These include, among others, United States Registration Nos. 1,214,225 (registered October 26, 1982) and 1,475,175 (registered February 28, 1988).

The disputed domain name was registered on May 19, 2022. Although the dispute domain name resolves to a parking page with pay-per-click (“PPC”) links, Respondent has used an email address associated with the disputed domain name to engage in potentially fraudulent behavior whereby Respondent posed as an official representative of Complainant, seeking to obtain sensitive personal and financial information from a prospective business partner.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant’s trademarks, (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 the FOSTER FARMS mark, and that the mark is “immediately recognizable” to its consumers, particularly in the United States, where Respondent lists an address of record.

Complainant contends that Respondent has incorporated the dominant portion of Complainant’s FOSTER FARMS mark, and merely added the dictionary terms “food service,” which is likely to confuse prospective online consumers into thinking that the disputed domain names are affiliated with, or endorsed, by Complainant, and Complainant’s food services and products.

Complainant contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith to profit from the good will of Complainant’s mark for Respondent’s own commercial gain. In particular, Complainant contends that Respondent has acted in bad faith in sending out fraudulent emails, that reference and refer to Complainant and to an actual employee thereof, in an apparent attempt to confuse prospective business partners into providing sensitive personal and financial information.

##### **B. Respondent**

As noted, although Respondent sent an informal communication to the Center in which Respondent stated, “[p]lease we are having issue with my client domain host and i also got an complaint email from you regarding submit of amendment”, Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

This Panel must first determine whether the disputed domain name <fosterfarmfoodservice.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 directly incorporates the dominant portion of Complainant's FOSTER FARMS mark, without the letter "s" and then adds the dictionary terms "food service."

Numerous UDRP panels have agreed that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. The Complainant's trademark is recognizable within the disputed domain name and the addition of the terms "food service" do not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 and, for example, *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. [D2000-1614](#) (transferring <ikeausa.com>); *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#) (transferring <ge-recruiting.com>); *Microsoft Corporation v. Step-Web*, WIPO Case No. [D2000-1500](#) (transferring <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. [D2000-1065](#) (transferring <cbsone.com>).

As for the slightly modified term "foster farm" in the disputed domain name, the mere deletion of the letter "s" in the trademark FOSTER FARMS is a common form of typosquatting that does not prevent a finding of confusing similarity for purposes of satisfying this first prong of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#) section 1.9 and, for example, *ESH Strategies Branding, LLC v. Kumpol Sawaengkarn*, WIPO Case No. [D2011-0843](#) (transferring <extendedstaysamerica.com>); *Crown Trophy, Inc. v. PrivacyProtect.org / Pluto Domain Services Private Limited*, WIPO Case No. [D2009-0061](#) (transferring <crowntrophies.com>); *Halcyon Yarn, Inc. v. Henry Chan*, WIPO Case No. [D2004-0336](#) (transferring <halcyonyarns.com>).

The Panel therefore finds that the disputed domain name is identical or 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 Policy provides some guidance to respondents on how to demonstrate rights or legitimate interests in the domain name at issue in a UDRP dispute. For example, 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 did not submit a reply to the Complaint, however. Rather, as mentioned in Section 4 of this Panel's decision, Respondent has used an email account associated with the disputed domain name to engage in apparent phishing scheme, which can never confer rights or legitimate interests upon a respondent. See [WIPO Overview 3.0](#) section 2.13.

Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interest in the disputed domain name, which Respondent has not rebutted. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. For example, paragraph 4(b)(iv) of the Policy states that bad faith can be shown where “by using the domain name [respondent has] intentionally attempted to attract, for commercial gain, Internet users to [respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or of a product or service on [the] web site or location.” As noted in Section 4 of this Panel’s decision, the disputed domain name resolves to a parking page with PPC links and Respondent has used the disputed domain name to set up an email account in a manner apparently calculated to confuse potential business partners of Complainant into providing Respondent their sensitive personal and financial information.

Hence, Respondent is trading on the goodwill of Complainant’s trademarks to attract Internet users, presumably for Respondent’s own commercial gain. The Panel thus finds Respondent registered and used the disputed domain name with knowledge of Complainant’s prior rights, thereby evidencing bad faith. See WIPO Overview 3.0, section 3.4, which notes that the use of a domain name for phishing constitutes bad faith.

Overall, the Panel finds that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy.

### **7. Decision**

For all 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 <fosterfarmfoodservice.com> be transferred to Complainant.

*/Lorelei Ritchie/*

**Lorelei Ritchie**

Sole Panelist

Dated: July 25, 2022