

## **ADMINISTRATIVE PANEL DECISION**

APT Advanced Polymer Technology Corp. v. Sean McGinty  
Case No. D2022-2809

### **1. The Parties**

Complainant is APT Advanced Polymer Technology Corp., United States of America (“U.S.”), represented by Thompson Hine LLP, U.S.

Respondent is Sean McGinty, U.S.

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

The disputed domain name <synlawndallas.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 July 29, 2022. On August 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to Complainant on August 9, 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 August 13, 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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was set at September 5, 2022. Respondent sent an informal communication on August 17, 2022 and a settlement offer on August 22, 2022.

Upon request from Complainant, the proceeding was suspended on August 23, 2022. Also upon request from Complainant, the proceeding was reinstated on September 27, 2022, and the response due date was set at October 10, 2022. Respondent did not submit any substantive response. Accordingly, the Center notified the Commencement of Panel Appointment Process on October 11, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on October 18, 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.

On October 28, 2022, Complainant submitted an unsolicited Supplemental Filing. On November 2, 2022, the Panel issued a Procedural Order providing Respondent with an opportunity to file a response to Complainant's unsolicited Supplemental Filing. Respondent did not submit a response.

#### **4. Factual Background**

Complainant, APT Advanced Polymer Technology Corp., is, *inter alia*, engaged in the business of manufacturing, distributing, and selling synthetic turf, related recreational surface coatings, and specialty products. Complainant has used the name and mark SYNLAWN in connection with such products and owns trademark registrations for the SYNLAWN mark in the U.S., the earliest of which, issued to registration on January 31, 2006 and was assigned to Complainant in 2017 (Registration No. 3,056,131). Complainant also owns a word mark registration for SYNLAWN that issued to registration on September 12, 2017 (Registration No. 5,285,445). Lastly, Complainant owns and uses the domain name <synlawn.com> to provide information concerning Complainant's and its products.

Respondent, who is reportedly based in Dallas, Texas, registered the disputed domain name on September 17, 2020. According to the evidence submitted with the Complaint, at some point thereafter the disputed domain name was used a redirect to a website at <turf.dog>, which promotes a full-service synthetic grass provider by the name of Turf Brothers.

The record shows that Complainant contacted Respondent in or about January 2022 regarding the disputed domain name. The parties have had some further communications, but the matter was not resolved. Respondent, however, ceased using the disputed domain name as a redirect to the website at <turf.dog>. Currently, the disputed domain name resolves to a parked Registrar website.

#### **5. Parties' Contentions**

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

Complainant maintains that it owns rights in the SYNLAWN mark on account of its use of SYNLAWN with its artificial turf products and synthetic grass since 2003 and on account of its trademark registrations for the SYNLAWN mark.

Complainant contends that the disputed domain name is confusingly similar to its SYNLAWN mark as it fully incorporates the SYNLAWN mark with the non-distinguishing geographically descriptive term "Dallas".

Complainant argues that that Respondent does not have rights or a legitimate interest in the disputed domain name as Respondent (i) is not known by the SYNLAWN mark, (ii) is not authorized by Complainant to use the SYNLAWN mark, and (iii) is not making a *bona fide* or legitimate noncommercial fair use of the disputed domain name as Respondent has merely used the disputed domain name to misdirect consumers to Respondent's website promoting goods and services related to or competing with Complainant's products and services.

Lastly, Complainant asserts that Respondent has registered and used the disputed domain name in bad faith as Respondent has registered a confusingly similar domain name based on the SYNLAWN mark and used such to attract and redirect Internet users to Respondent's website promoting related and competing products and services. Complainant also argues that Respondent also registered the disputed domain name to disrupt Complainant's business by misleading and attracting consumers looking for Complainant's authorized Dallas-based distributorship for SYNLAWN products.

## **B. Respondent**

Respondent did not reply to Complainant's contentions, but sent an email to the Center on August 17, 2022 in which Respondent asserts that his "company is also in the Synthetic Law Turf business and we are based in Dallas, Texas." Respondent also maintains in that email that he registered the disputed domain name in good faith because "it related to our core business and geographic location." In that regard, Respondent claims to own "200 other domains related specifically to the Synthetic Lawn Grass Turf industry."

Lastly, Respondent acknowledges that he was contacted by a representative of Complainant and was willing to engage in a conversation with Complainant, but that Complainant "offered no financial consideration for my original investment and expenses I incurred managing the domain."

On August 22, 2022, Respondent sent a further communication to the Center in which Respondent attached a partially executed Standard Settlement Form that included an offer by Respondent to transfer the disputed domain name to Complainant in return for a payment of USD 1,000.

## **6. Preliminary Consideration of Complainant's Supplemental Filing**

Neither the Policy nor the Rules provide a party with an automatic right to submit additional arguments or evidence. Under paragraph 10 of the Rules, Panels enjoy broad powers for conducting administrative proceedings, provided that the parties are treated fairly and the proceedings are conducted expeditiously. Within this framework, a panel can determine within its sole discretion whether to admit or reject supplemental submissions, and, under paragraph 12 of the Rules, to request further statements or documents from either party. In exercising this discretion, many panels have made clear that additional evidence or submissions should only be admitted in exceptional circumstances, such as, by way of example, where new pertinent facts arise after the submission of the complaint or where a party could not have reasonably known of the existence, relevance or veracity of further material when it made its primary submission. See, e.g., *Office Club, Ltd. v. John Adem*, WIPO Case No. [D2000-1480](#); *Gordon Sumner, p/k/a Sting v. Michael Urvan*, WIPO Case No. [D2000-0596](#); *The E.W. Scripps Company v. Sinologic Industries*, WIPO Case No. [D2003-0447](#); *Cerulean Studios, LLC v. Hexuan Cai*, WIPO Case No. [D2013-0902](#). The Panel agrees with this position and adds that further material should only be admitted to the extent necessary in a proceeding and when such is essential in reaching a fair decision on the facts of the matter.

In the instant case, the Panel does not believe there are exceptional circumstances in this matter that warrant the acceptance of Complainant's supplemental filing as it basically covers items that are already in the record. The Panel therefore declines to accept Complainant's Supplemental Filing and has disregarded such in reaching its decision

## **7. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

## A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns trademark registrations for the SYNLAWN mark in the U.S. and that such issued to registration well before Respondent registered the disputed domain name.

With Complainant's rights in the SYNLAWN mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top Level Domain such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally, panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this standing requirement.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's SYNLAWN mark as it fully incorporates the SYNLAWN mark. The addition of the geographic term "Dallas" does not prevent a finding of confusing similarity, as SYNLAWN is clearly recognizable in, and the dominant component of, the disputed domain name. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's SYNLAWN mark and in showing that the disputed domain name is confusingly similar to that trademark.

## B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Here, Respondent has used the disputed domain name for purposes of redirecting web users to a website at <turf.dog> for a company called Turf Brothers promoting various synthetic grass products and services. These products appear to compete with those of Complainant under the SYNLAWN mark. While Respondent claims to have registered the disputed domain name because it is related to Respondent's core business in synthetic lawn grass turf and location in Dallas, Texas, Respondent provided no evidence showing how that could possibly be the case or how the disputed domain name is connected to a legitimate business interest of Respondent or constitutes a fair use of Complainant's SYNLAWN mark. Indeed, although Respondent claims to own over 200 hundred domain names related to the synthetic lawn grass turf industry, Respondent provided no evidence regarding any of these alleged domain names. But even if it had done so, the Panel finds it unlikely, on the record submitted, that Respondent would have been able to demonstrate rights or legitimate interest over the disputed domain name, which plays on the Complainant's SYNLAWN mark to redirect users to the Respondent's website.

To be sure, the evidence before the Panel makes it fairly obvious that Respondent registered the disputed domain name that uses the SYNLAWN mark with the city name "Dallas" as a way of profiting from the disputed domain name to drive traffic to Respondent's website offering competing products and services. Given the likelihood that the disputed domain name will be seen by the relevant consumers as somehow related to Complainant and its SYNLAWN products in the Dallas metropolitan area, it is more likely than not that Respondent's use of the disputed domain name is for purposes of driving web traffic to Respondent's website for Respondent's profit. Such use of the disputed domain name does not amount to a *bone fide* use or provide Respondent with a legitimate interest in the disputed domain name. See [WIPO Overview 3.0](#) at section 2.5.3.

Given that Complainant has established with sufficient evidence that it owns rights in the SYNLAWN mark, and given Respondent's above noted actions, the Panel concludes that Respondent does not have a right or legitimate interests in the disputed domain name and that none of the circumstances of Paragraph 4(c) of the Policy are evident in this case.

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

In this matter, Respondent has registered and used the disputed domain name that plays upon Complainant's SYNLAWN mark and used such with a website promoting various competing or related products and services connected to the synthetic turf industry. As already noted, the combination of Complainant's SYNLAWN mark with the geographic location of Dallas are likely to be seen by the relevant consumers as suggesting a connection to or authorization by Complainant and its SYNLAWN products.

Given Respondent's actions and failure to substantively respond to Complainant's contentions in this proceeding or to explain or justify his actions with any evidence beyond unsubstantiated and self-serving statements in an informal email, it appears from the evidence before the Panel that Respondent registered and used the disputed domain name opportunistically, which is likely to be seen as connected to Complainant, to intentionally and misleadingly bring Internet users to Respondent's website for Respondent's own profit. See [WIPO Overview 3.0](#) at Section 3.1.4 (and cases cited therein).

The Panel also notes that Respondent's bad faith and desire to profit from the disputed domain name is further evident from Respondent's apparent willingness to transfer the disputed domain name to Complainant for a fee of USD 1,000. Respondent's underlying justification that Complainant "offered no financial consideration for my original investment and expenses I incurred managing the domain," rings hollow in light of the fact that Respondent provided no evidence showing these alleged costs let alone any evidence justifying a legitimate basis for registering and using the disputed domain name in the first place. At best, this case is akin to someone proverbially being caught "with his hand in the cookie jar" and then trying to create a narrative to argue otherwise. The bottom line here is that Respondent registered and used the disputed domain name for purposes of promoting Respondent's sales of competing artificial turf products for Respondent's profit.

Accordingly, the Panel finds that Complainant succeeds under this element of the Policy.

### **8. 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 <synlawndallas.com> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: November 7, 2022