

## **ADMINISTRATIVE PANEL DECISION**

SF Investments, Inc. v. Mike John, SS inc

Case No. D2023-0028

### **1. The Parties**

Complainant is SF Investments, Inc., United States of America (“United States”), represented internally.

Respondent is Mike John, SS inc, United States.

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

The disputed domain name <smithfieldsfdbbrand.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 January 3, 2023. On January 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on January 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same date updating the registrant identity as disclosed by the Registrar. Complainant filed a further amendment on January 18, 2023, to request the remedy of transfer in place of cancellation.

The Center verified that the Complaint together with the amendments to the 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 January 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 10, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on February 20, 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**

Complainant is a subsidiary of Smithfield Foods, Inc., which is part of a global meat company operating in the United States, China, and Europe. Complainant owns several registrations for its SMITHFIELD trademark, including for example United States Trademark Registration No. 2624764, registered September 24, 2002 in International Class 29, with a first use in commerce date of 1936.

The disputed domain name was registered on May 16, 2022 and does not resolve to an active webpage.

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

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

Complainant alleges that Respondent is using the disputed domain name to commit fraud and theft from unsuspecting third parties who are led to believe they are communicating with Smithfield Foods, Inc.

Complainant avers that fraudulent purchase orders and credit applications were submitted to a third-party paper supplier under the names of Smithfield Foods' senior officers, using an email address employing the disputed domain name. The fraud allegedly resulted in the supply of two truckloads of toilet paper products worth USD 50,000 without payment to the supplier.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's SMITHFIELD trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain name.

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

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g.,

*ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

### **A. Identical or Confusingly Similar**

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's SMITHFIELD mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or confusingly similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".com" TLD from the disputed domain name, the Panel notes that Complainant's entire SMITHFIELD mark is included in the disputed domain name, adding only the letters "sfd" and the word "brand". The Panel finds that these minor modifications to Complainant's mark does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar).

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark and concludes that the first element of paragraph 4(a) of the Policy is established.

### **B. Rights or Legitimate Interests**

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*

The Panel accepts Complainant's undisputed allegations that Respondent has no registration or rights to use its trademark in the disputed domain name.

The Panel also accepts as credible Complainant's undisputed allegations that the disputed domain name has been used by Respondent to impersonate officials of Smithfield Foods, Inc., as part of a fraudulent scheme.<sup>1</sup> The Panel finds, therefore, that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

While the disputed domain name does not resolve to an active webpage, the record presents credible evidence that it was used as part of a fraudulent scheme. Therefore, the Panel also finds that Respondent is not making a *bona fide* use of the disputed domain name. The Panel further infers that Respondent is not commonly known by the disputed domain name.

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<sup>1</sup>The Panel notes that Complainant's annex containing alleged third-party correspondence and false purchase orders lacks any form of authentication. However in the circumstances, the Panel accepts the annex as credible evidence of use of the disputed domain name and an associated email address to impersonate personnel of Smithfield Foods and to further a fraudulent scheme to steal goods.

The Panel finds that a *prima facie* case has been established. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is established.

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

Finally, the Panel concludes that registration and use of the disputed domain name in bad faith has been established, as elaborated below.

Respondent chose to register the disputed domain name incorporating Complainant's inherently distinctive mark, which has been used in the United States for over 70 years. The Panel also notes that the disputed domain name is similar to Complainant's own name and to the name of Complainant's parent company Smithfield Foods, Inc. Under these circumstances, it appears that Respondent was aware of Complainant's SMITHFIELD mark and sought to exploit it through registration of the confusingly similar disputed domain name. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g.*, [WIPO Overview 3.0](#), sections 3.2.1 and 3.2.2.

As detailed above, the record presents credible evidence that the disputed domain name was used to further a fraudulent scheme. This shows bad faith use.

Respondent's failure to submit a response to the Complaint further supports a finding of bad faith.

The Panel holds therefore that Respondent registered and used the disputed domain name in bad faith and that the requirements of the third element of paragraph 4(a) of the Policy are met.

### **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 <smithfieldsfdbbrand.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: February 28, 2023