

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. gmod wizard
Case No. D2023-3010

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, represented internally.

The Respondent is gmod wizard, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name, <syngneta.com> (the "Domain Name"), is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 13, 2023. On July 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 14, 2023, 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 (Redacted/ 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 July 27, 2023 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 amendment to the Complaint on July 28, 2023.

The Center verified that the Complaint together with the amendment 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 the Respondent of the Complaint, and the proceedings commenced on August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2023.

The Center appointed Tony Willoughby as the sole panelist in this matter on September 11, 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the registrant details of the Domain Name were redacted and not fully available in the public Whois at the time of the submission of the Complaint. In response to the Center's Registrar Verification Request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

4. Factual Background

The Complainant is a substantial agri-business employing 30,000 employees in 90 countries. It operates websites connected to its various domain names including by way of example <syngenta.com>, <syngenta.biz>, <syngenta.co>, <syngenta.co.uk>, <syngenta.cn>, and <syngenta.de>. It is the registered proprietor of *inter alia* the following trade mark registrations:

International Trade Mark Registration No. 732663 SYNGENTA (word) registered on March 8, 2000 for a wide variety of goods and services in classes 1, 2, 5, 7, 8, 9, 10, 16, 29, 30, 31, 32, 35, 36, 41, and 42.

United States Trade Mark Registration No. 3036058 SYNGENTA registered on December 27, 2005 for the same wide range of goods and services in the same classes as the above-mentioned International Trade Mark Registration, but renewed on August 19, 2023 for a reduced number of goods and services in classes 1, 5, 16, 31, 35, 36, 41, and 42.

The Domain Name was registered on June 12, 2023, but is not connected to an active website.

On June 20, 2023 the Complainant sent an email to the address then appearing on the Registrar's record for the Domain Name, being the email address for the redaction service used for registration of the Domain Name. The email drew attention to the Complainant's trade mark rights in respect of its SYNGENTA trade mark. The letter asserted that the Domain Name is a mis-spelling of the Complainant's "well-known" trade mark and, as such, an infringement of the Complainant's rights "causing confusion for our customers and potential damage to our business".

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is an obvious mis-spelling of the Complainant's SYNGENTA trade mark rendering it confusingly similar to the SYNGENTA trade mark; that the Respondent has no affiliation with the Complainant and has no authorization to use the Complainant's trade mark in this or any other form and thus has no rights or legitimate interests in respect of the Domain Name; that the Domain Name has been registered and is being used in bad faith.

In support of its contention that the Domain Name has been registered and is being used in bad faith the Complainant makes the following points:

1. The Domain Name resolves not to an active website but to a "cgi-bin" folder and as such is not being used in a *bona fide* offering of goods and services or a legitimate noncommercial or fair use, but is rather a bad faith registration in violation of paragraph 4(b)(iv) of the Policy.
2. The DNS for the Domain Name contains MX-records, the presence of which raises the possibility that the Domain Name may be used for fraudulent email communication.

3. The Respondent failed to reply to the Complainant's cease and desist letter (see section 4 above).
4. The Domain Name is almost identical to the Complainant's trade mark. The inversion of the letters "e" and "n" do not materially change the optics of SYNGENTA and render confusion likely.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

The Domain Name comprises the term syngneta and the generic Top Level Domain "com". The Domain Name differs from the Complainant's SYNGENTA trade mark in that the positions of the "e" and the "n" have been transposed.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The trade mark upon which the Complainant relies is SYNGENTA, which in the view of the Panel is readily recognisable in the Domain Name. The Panel finds that the Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

The Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The section of the Complaint dealing with this element of the Policy states that

"The Respondent has no affiliation with the Complainant nor is the Respondent authorized to use Complainant's registered trademark."

Paragraph 4(c) of the Policy sets out a non-exhaustive list of circumstances any one of which, if proved to the satisfaction of the Panel based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests in respect of the disputed domain name for the purposes of Paragraph 4(a)(ii) of the Policy.

The non-exhaustive list in paragraph 4(c) identifies three such sets of circumstances, which briefly are: (i) the respondent has used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services; (ii) the respondent has been commonly known by the disputed domain name; and (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name. The Respondent has not responded to the Complainant's contentions, but that does not mean that the Complainant's unanswered contentions are to be accepted without question.

Those contentions are: first the Respondent is not affiliated with the Complainant and second the Respondent is not authorized to use the Complainant's SYNGENTA trade mark.

The Panel has no difficulty in accepting those contentions, but of themselves they do not address any potential arguments that the Respondent might have advanced in line with those set out in paragraph 4(c).

As to that there is no evidence before the Panel that the Respondent is making any active use of the Domain Name, nor is there anything before the Panel to suggest that the Respondent is or has ever been known by the Domain Name.

The Respondent has not put anything before the Panel to suggest that it has rights or legitimate interests in respect of the Domain Name and on the face of the documents before the Panel is unable to see any basis upon which the Respondent could be said to have rights or legitimate interests in respect of the Domain Name. The Panel finds that the Respondent has no such rights or legitimate interests.

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In cases such as this one where (a) there has been no response; (b) nothing is known of the respondent; (c) the disputed domain name is not identical to the complainant's trade mark; and (d) the disputed domain name is not in active use, it is particularly difficult for a complainant to prove that the disputed domain name has been registered and is being used in bad faith. However, for the Complaint to succeed, something needs to be provided to the panel sufficient to justify the panel drawing the necessary inference.

As indicated in paragraph 5A above the Complainant has supported its bad faith claim under this element of the Policy with four contentions.

First, the Complainant argues that as the Domain Name resolves not to an active website but to a "cgi-bin" folder it is not being used in relation to a *bona fide* offering of goods and services nor is it a legitimate noncommercial or fair use, but rather it is a bad faith registration in violation of paragraph 4(b)(iv) of the Policy.

The Panel accepts and has already found that there is nothing to indicate that the Respondent's use of the Domain Name gives rise to rights or legitimate interests in respect of the Domain Name, but the Panel has difficulty accepting that the fact that it resolves to a "cgi-bin" folder necessarily leads to a finding that the Domain Name "is a bad faith registration in violation of paragraph 4(b)(iv) of the Policy".

The Complainant cites cases supporting a finding of bad faith in these circumstances, one example being *FIL Limited v. George Dyle*, WIPO Case No. [D2014-1418](#) involving the domain name, <fidelity-group.org>, which the panel found to be a clear reference to the complainant group of companies, "FIL" being an acronym for "Fidelity International Ltd." In that case the panel found:

"As shown by Annex 10 of the Complaint, the disputed domain name does not resolve to an active web site, only to a very basic site with a 'cgi-bin' reference, indicating a link to a script folder for "Common Gateway Interface". Customers searching for information on the Complainant and the Complainant's service may come to the conclusion that there are problems at the Complainant's site, that the Complainant's web information and services are no

longer in active use. Such ‘non-use’ by the Respondent can in this Panel’s view have the same negative result on the Complainant as active use of a disputing domain name, and amounts to bad faith use.”

The extra “something” that the complainant had in that case, but which is not present in this case, was the fact that the disputed domain name was found by the panel to be a clear reference to the complainant. The same passage was cited with approval in *Statoil ASA v. Domain Admin, Privacy Protection Service Inc D/B/A PrivacyProtect.org / Nicolas Kerry*, WIPO Case No. [D2017-0046](#) (“*Statoil*”) involving the domain name, <statoil-eu.com>, where again the panel was in no doubt that the respondent was targeting the complainant.

Secondly, the Complainant argues that as the DNS for the Domain Name contains MX-records, this raises the possibility that the Domain Name may be used for fraudulent email communication. This is a possibility, as it is with any domain name configured for email usage, but of itself not determinative of bad faith registration and use.

The cases cited by the Complainant in support of this contention include *Statoil* and *Swiss Re Ltd v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1549](#) (“*SwissRe*”) involving the domain name, <srvw-swissre.com> and *PrideStaff, Inc. v. Pearl Njinjoh, Trearl*, WIPO Case No. [D2021-2033](#) (“*PrideStaff*”) involving the domain name, <pridestaffjobs.com>. In both *SwissRe* and *PrideStaff* the panels found that the evidence supported the complainants’ contentions that the respondents were targeting them [“Furthermore, the evidence in the record provided by Complainant shows that Respondent was using the Mark in various fraudulent schemes that Respondent benefitted from or could have benefitted from financially.” (*SwissRe*)] [“The Complainant has credibly shown that the Respondent registered the disputed domain name with knowledge of the Complainant’s pre-existing trademark rights.” *PrideStaff*]

The domain names in all those cases were not in the same category as the Domain Name, which only directly indicates the Complainant if this is, as contended for by the Complainant, a classic case of typosquatting.

Thirdly, the Complainant prays in aid the Respondent’s failure to reply to the Complainant’s cease and desist letter (see section 4 above). The Panel agrees that this is a relevant factor to throw into the mix. In combination with the failure to respond to the Complaint this may very well indicate that the Respondent has no answer to the Complainant’s contentions. The Panel has verified that the cease and desist letter was accurately addressed to the email address provided to the Registrar on registration of the Domain Name and that the case papers were sent to the Respondent in accordance with the contact details disclosed by the Registrar Verification.

Finally, the Complainant observes that the Domain Name is almost identical to the Complainant’s trade mark. The inversion of the letters “e” and “n” do not materially change the optics of SYNGENTA and render confusion likely. The Panel agrees that this is also true, but is only of significance if “syngneta” has no meaning in any other context. The papers in the case are silent on the point.

While the cease-and-desist letter asserts that the similarity of the Domain Name is causing confusion, there is no evidence before the Panel in support of that contention; nonetheless, the Panel accepts that the likelihood of confusion is high.

Taking all the above into account and, in particular the failure of the Respondent to respond to the Complainant’s contentions as set out in the cease and desist letter and the Complaint, the Panel concludes on the balance of probabilities that the Respondent adopted the Domain Name intentionally as a mis-spelling of the Complainant’s trade mark and with a view to exploiting the potential for confusion to its own commercial benefit and the disadvantage of the Complainant.

If the Respondent has not yet made active use of the Domain Name, it nonetheless represents, in the view of the Panel, an unjustifiable threat hanging over the head of the Complainant and, as such, a continuing bad faith use for the purposes of this element of the Policy.

The Panel finds on the balance of probabilities that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <syngneta.com>, be transferred to the Complainant.

/Tony Willoughby/

Tony Willoughby

Sole Panelist

Date: September 25, 2023