

## **ADMINISTRATIVE PANEL DECISION**

Flowers Foods, Inc., and Flowers Bakeries Brands, LLC v. David Lebaron  
Case No. D2023-4800

### **1. The Parties**

The Complainants are Flowers Foods, Inc., and Flowers Bakeries Brands, LLC, United States of America, represented by Kilpatrick Townsend & Stockton LLP, United States of America.

The Respondent is David Lebaron, United States of America.

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

The disputed domain name <flowersfoods-inc.com> is registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 20, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 20, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 14, 2023.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on December 26, 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's Flowers Foods, Inc. and Flowers Bakeries Brands, LLC (hereinafter "Complainant") was founded in 1919 and is one of the largest producers of packaged bakery foods in the United States. Complainant operates 46 bakeries that produce a wide range of bakery foods, such as breads, buns, rolls, snack cakes and tortillas, for retail and food service customers in the U.S. Complainant sells its products under a number of brands such as NATURE'S OWN, DAVE'S KILLER BREAD, CANYON BAKEHOUSE, TASTYKAKE and WONDER. In 2020, Complainant had sales of USD 4.4 billion.

Complainant uses the mark FLOWERS FOODS in connection with its products and services. Complainant offers a line of bakery goods, such as various buns, under the mark FLOWERS FOODS, offered for sale through popular retailers such as Sam's Club, Costco, Instacart, IGA, Food Services Direct and Walmart.

Complainant also uses its FLOWERS FOODS mark in connection with a "History of Baking Exhibit" located at Complainant's "Flowers Foods Heritage Center in Thomasville, Georgia." The Exhibit explains how a family-owned bakery grew to be a USD 4 billion publicly held baking company.

Complainant owns United States of America Trademark Registrations for the mark FLOWERS FOODS alone and with a design, including the following:

Registration No. 3181003, registered December 5, 2006

Registration No. 3181002, registered December 5, 2006

Complainant also owns numerous registrations for the mark FLOWERS FOODS in other jurisdictions including the following:

European Union Registration No. 011172475, Registered January 16, 2013

United Kingdom Registration No. UK00911172475, Registered January 16, 2013

Indian Registration No. 1749173, Registered October 30, 2008

Complainant operates a website at "www.flowersfoods.com" which it uses to provide information concerning Complainant and its products. Complainant registered the <flowersfoods.com> domain name in 2000 and has used the domain name with its website since 2005. Complainant also uses its FLOWERS FOODS mark on social media platforms such as LinkedIn and Twitter.

Respondent registered the disputed domain name on August 23, 2023. Since registering the disputed domain name, Respondent has used it in connection with a scheme to defraud unsuspecting suppliers of Complainant or other companies by posing as Complainant's Chief Procurement Officer. In particular, fraudulent emails and inquiries are sent by Respondent purportedly on behalf of the Chief Procurement Officer to various suppliers requesting quotes for bulk purchases of flour, sugar, cooking oil and other items followed by fraudulent orders for such products purportedly on behalf of Complainant to be shipped or delivered to various locations.

Respondent also prepared and sent fraudulent purchase orders impersonating Complainant in order to secure shipments of products ordered.

Respondent's scheme appears to be in furtherance of a similar scheme that was used against Complainant using the domain name <flowersfoodsinc.com>. That scheme was addressed by Complainant in early July 2021 and a UDRP proceeding regarding that domain name was filed on July 13, 2021. The UDRP proceeding, *Flowers Foods, Inc. and Flowers Bakeries Brands, LLC v. Withheld for Privacy, Privacy service provided by Withheld for Privacy ehf/Name Redacted*, WIPO Case No. [D2021-2276](#), resulted in the <flowersfoodsinc.com> domain name being transferred to Complainant.

The disputed domain name is currently suspended as a result of Complainant's efforts to stop Respondent's fraudulent scheme.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's FLOWERS FOODS mark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

### B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

In order to succeed in its claim, Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### 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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of a hyphen before "INC" does not prevent a finding that the disputed domain name is identical or confusingly similar to Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity as shown here, where Respondent is using the disputed domain name for a fraudulent scheme in which Respondent impersonates Complainant in emails for the purpose of obtaining illegal financial benefits, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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.

In the present case, the Panel notes that Respondent registered and is using the disputed domain name in connection with a fraudulent and illegal scheme to impersonate Complainant for the purposes of Respondent’s illegal financial benefit.

Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that 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 <flowersfoods-inc.com> be transferred to Complainant.

/Lynda J. Zadra-Symes/

**Lynda J. Zadra-Symes**

Sole Panelist

Date: January 9, 2024