

## **ADMINISTRATIVE PANEL DECISION**

PepsiCo, Inc. v. Seo Bnk

Case No. D2024-2219

### **1. The Parties**

The Complainant is PepsiCo, Inc., United States of America (“United States”), represented by ZeroFox, United States.

The Respondent is Seo Bnk, Thailand.

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

The disputed domain name <laysthailand.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 May 29, 2024. On May 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 2024, 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 June 5, 2024.

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 June 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2024. The Response was filed with the Center on June 10, 2024. The Respondent also sent email communications to the Center on June 1, 3, 4, 10, and 20, 2024, and on July 4, 2024.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on July 12, 2024. 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**

The Complainant in this proceeding is Pepsico, LLC (hereafter referred to as “the Complainant”), an American multinational food, snack and beverage corporation headquartered in Harrison, New York, United States. The Complainant has operations all around the world and its products are distributed across more than 200 countries and territories. The Complainant is one of the world’s largest companies manufacturing, distributing, and marketing food, snacks, and beverages.

One of the Complainant’s largest brands is “Lay’s”, a brand of potato chips with different flavours, and also the name of the company that founded the brand in the United States.

The Complainant affirms, without documentary evidence, that it is the owner of multiple registrations consisting of the term LAY’S, including in Thailand.

The Complainant also affirms that the Lay’s brand has an online presence through its official website “lays.com” which was registered in 1999.

The disputed domain name, which is currently not reachable, was registered on February 16, 2021.

According to screenshots of the corresponding website attached to the complaint, it appears that (at least on May 28, 2024) the disputed domain name redirected to a website that displayed the Complainant’s LAY’S trademark as well as copyrighted imagery of the Complainant’s products, and purportedly offered the Complainant’s products for sale. On the same website images of products unrelated to those of the Complainant were also displayed, namely Air Purifiers and Air Conditioners.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the LAY’S trademark, that the Respondents has no rights or legitimate interests in respect of the disputed domain name, and particularly that the disputed domain name was registered and is being used in bad faith to impersonate the Complainant’s subsidiary, and that the use of the Complainant’s copyrighted and trademarked website content (logos, merchandise, biographical information) show that the Respondent was aware of the Complainant and its products and services, and tried to direct consumers away from the actual Lay’s products and deceive them into believing that the Respondent’s website was affiliated with, sponsored by, or associated with the Complainant.

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

The Respondent did not refute the Complainant’s contentions.

In fact, the Respondent sent several short emails to the Center. In brief, the Respondent, after claiming to have legally acquired the disputed domain name from Godaddy, sent its short response to the Center on June 10, 2024, asking the Center to cancel the disputed domain name, also sending a signed settlement form asking for this deletion. Then, after the Complainant declared it wished for a transfer of the disputed

domain name, the Respondent sent a new email, affirming that they legally acquired the disputed domain name after the previous owner let the domain name expire, and now asking for USD 1,000 as reimbursement for the expenses incurred for acquiring and maintaining the disputed domain name. After the Complainant expressed its intention to continue the proceeding in order to obtain a decision, the Respondent sent a new email saying that it now agreed to transfer the disputed domain name to the Complainant, and apologized for any confusion caused earlier (presumably referring to previous messages).

## 6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraph 4(a) of the Policy requires that the Complainant must demonstrate to the Panel that:

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

### 6.1 Procedural issue

The Complainant affirmed, without documentary evidence, that it is the owner of multiple registrations consisting of the term LAY'S, including in Thailand.

Owing to the above assertion of the Complainant regarding its rights to the LAY'S trademark, the fact that the Respondent has not contested these rights, but asked to transfer the disputed domain name to the Complainant, the Panel has determined that in the particular circumstances of this case it is reasonable for it to undertake limited factual research, restricted to visiting public databases to ascertain the existence of the Complainant's rights to the LAY'S trademark (see paragraph 4.8 of the [WIPO Overview 3.0](#) on the topic of independent research by UDRP panels).

This search has confirmed that the Complainant is indeed the owner of multiple registrations containing and/or consisting of the term LAY'S. Amongst them, Australian trademark registration for LAY'S (design), number 1218032, registered on January 7, 2008.

These rights were also recognized in previous WIPO cases, such as in *PepsiCo Inc., Frito-Lay North America, Inc., v. Privacy service provided by Withheld for Privacy ehf / Curtis Murphy*, WIPO Case No. [D2021-2587](#) in which it was affirmed that the Complainant is the registered owner of numerous trademarks consisting of the term LAY'S.

#### 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.

The Complainant has rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms here, “thailand”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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. In addition, the Respondent first asked for the deletion of the disputed domain name and afterwards for its transfer to the Complainant, thus confirming its lack of rights or legitimate interests in the disputed domain name.

Finally, panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Respondent was aware of the Complainant’s trademark registrations and rights to the LAY’S trademark when it registered the disputed domain name. LAY’S is not a common or descriptive term. The disputed domain name contains the Complainant’s registered trademark in its entirety, without any authorization or approval.

In addition, owing to the use of the disputed domain name to redirect to a website displaying the Complainant’s trademark and copyrighted images, it is very unlikely that the Respondent was not aware of the existence of the Complainant’s trademark and domain name when registering the disputed domain name. Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant’s earlier rights to the LAY’S trademark.

Further, by using the disputed domain name, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s trademark. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Moreover, panels have held that the use of a domain name for illegal activity, here alleged to be used to mislead Internet users into believing they are visiting an authorized website of (or linked to) the Complainant, i.e., claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Finally, the Respondent in its several emails sent to the Center did not deny awareness of the Complainant's rights, nor did it contest the Complainant's assertions regarding its bad faith use of the disputed domain name. Indeed, the Respondent asked first to cancel the disputed domain name and then, after attempting to be paid for it, asked to transfer the disputed domain name to the Complainant for free.

The Panel finds that the 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 <laysthailand.com> be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: July 25, 2024