

ADMINISTRATIVE PANEL DECISION

2441674 Ontario Inc. v. James Shipman

Case No. D2025-0836

1. The Parties

The Complainant is 2441674 Ontario Inc., Canada, represented by Greenberg Traurig LLP, United States of America ("United States").

The Respondent is James Shipman, United States.

2. The Domain Name and Registrar

The disputed domain name <fgfbands.com> (the "Domain Name") is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 27, 2025. On February 28, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 1, 2025, 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 (Domain Admin, Privacy Protect LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2025, 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 amended Complaint on March 5, 2025.

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 the Respondent of the Complaint, and the proceedings commenced on March 11, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2025. A third-party sent two email communications to the Center on March 17 and March 18, 2025, indicating that it had received a copy of the Complaint at its business address and indicating that it was unconnected to the Respondent. On March 18, 2025, the Complainant filed a supplemental filing regarding the third-party's communications.

The Center appointed Nicholas Smith as the sole panelist in this matter on April 14, 2025. 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 Panel has considered whether to have regard to the Complainant's supplemental filing. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.6 states relevantly that:

"Paragraph 10 of the UDRP Rules vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition.

Paragraph 12 of the UDRP Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel.

[...]

In all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance)."

The Panel in accordance with paragraph 10 of the Rules has chosen not to accept this unsolicited filing. The filing contains material (being a further third party email communication indicating the Respondent used false contact details when registering the Domain Name) that reiterates matters already part of the record of this case. The filing also contains additional submissions that restate the well-known principles of section 3.2.1 of the [WIPO Overview 3.0](#) that the use of false contact details can be a relevant factor in finding bad faith. In any event, its content does not affect the substantive outcome of the proceeding.

4. Factual Background

The Complainant is a Canadian company that since 2005 (in combination with various related entities) has used the trademark FGF BRANDS in the manufacturing, sale, and distribution of bakery products throughout the United States and Canada. Since 2005 it has advertised its goods through its primary website at "www.fgfbrands.com".

The Complainant holds a trademark registration for FGF BRANDS (the "FGF BRANDS Mark") in Canada (registration number TMA981540, registered September 26, 2017, for bakery goods in class 30).

The Domain Name was registered on December 13, 2024, and resolves to a hosting page maintained by the Registrar.

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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the FGF BRANDS Mark, having registered the FGF BRANDS Mark in Canada. The Domain Name is confusingly similar to the FGF BRANDS Mark as it consists of a minor misspelling of the FGF BRANDS Mark (removing the “r”) and adds a generic Top-Level Domain (“gTLD”).
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the FGF BRANDS Mark. The Respondent is not commonly known by the FGF BRANDS Mark, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Indeed, the Domain Name simply resolves to a hosting page maintained by the Registrar.
- c) The Domain Name was registered and is being used in bad faith. There is no plausible circumstance under which the Respondent could legitimately use the Domain Name, which is identical to the FGF BRANDS Mark, other than in bad faith. Given the reputation of the FGF BRANDS Mark and the nature of the Domain Name, which is a minor misspelling of the FGF BRANDS Mark, the Respondent must have been aware of the Complainant’s mark at the time of registration. In such circumstances, the Respondent’s passive holding of the Domain Name amounts to use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 Domain Name. [WIPO Overview 3.0](#), section 1.7.

The 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 mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purpose of the first element. Here the deletion of the letter “r” creates a minor misspelling of the Complainant’s trademark. [WIPO Overview 3.0](#), section 1.9.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

There is no evidence of any demonstrable preparations to use the Domain Name at all or any other evidence that would give rise to rights or legitimate interests in the Domain Name.

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.

The Panel finds on the balance of probabilities that given the nature of the Domain Name, being a minor misspelling of the FGF BRANDS Mark which has been used for almost 20 years, and the absence of any explanation it is most likely that the Respondent was aware of the Complainant and its trademark when registering the Domain Name.

Further, the Panel considers that the record of this case reflects that there is no evidence of any use or demonstrable preparations to use the Domain Name.

UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the disputed domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the long period of use of the Complainant's coined mark, the composition of the Domain Name (being a minor misspelling of the FGF BRANDS Mark), and material before the Panel (being the third party communications) suggesting that the Respondent has used false contact details in its registration of the Domain Name and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

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 Domain Name <fgfbands.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: April 25, 2025