

## **ADMINISTRATIVE PANEL DECISION**

Berry Fresh LLC v. Palmer Moreno, Leharris technologies  
Case No. D2025-2383

### **1. The Parties**

The Complainant is Berry Fresh LLC, United States of America ("United States"), internally represented.

The Respondent is Palmer Moreno, Leharris technologies, United States.

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

The disputed domain name <berryfreshfoods.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 June 16, 2025. On June 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 2025, 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 ("Redacted for Privacy") and contact information in the Complaint. The Center sent an email communication to the Complainant on June 18, 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 amendment to the Complaint on the same date.

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 20, 2025. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 11, 2025.

The Center appointed Michelle Brownlee as the sole panelist in this matter on July 15, 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.

#### **4. Factual Background**

The Complainant is a limited liability company organized under the laws of California, United States that has been selling produce under the mark BERRY FRESH since 2007. The Complainant owns United States Trademark Registration Number 4,730,680 for the mark BERRY FRESH in connection with blueberries, blackberries, raspberries and strawberries, registered on May 5, 2015.

The Complainant operates a website using the domain name <berryfresh.com>.

The disputed domain name was registered on April 19, 2025. The disputed domain name does not resolve to a website. The disputed domain name was used in connection with emails sent to businesses using the name of a former employee of the Complainant in apparent attempts to open up credit accounts to order products.

#### **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 Complainant's BERRY FRESH mark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith by sending fraudulent communications that misrepresent that the communications originate from the Complainant for the purpose of defrauding third parties in an attempt to get the parties to ship goods on credit.

##### **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 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 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 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, "foods", 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.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation of a former employee of the Complainant for the purpose of fraudulently inducing third parties to ship goods on credit, 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 used the disputed domain name to impersonate a former employee of the Complainant for the purpose of fraudulently inducing third parties to ship goods on credit. The Panel finds that this is bad faith under paragraph 4(b)(iv) of the Policy in that the Respondent used the disputed domain name to create a likelihood of confusion with the Complainant’s mark for the purpose of commercial gain.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation in furtherance of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes 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 disputed domain name <berryfreshfoods.com> be transferred to the Complainant.

*/Michelle Brownlee/*

**Michelle Brownlee**

Sole Panelist

Date: July 28, 2025