

ADMINISTRATIVE PANEL DECISION

Marks and Spencer Plc v. Christopher Cherry, The Shellfish Company Limited

Case No. D2026-2458

1. The Parties

The Complainant is Marks and Spencer Plc, United Kingdom, represented by Stobbs IP Limited, United Kingdom.

The Respondent is Christopher Cherry, The Shellfish Company Limited, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <mandsfood.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 5, 2026. On June 8, 2026, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2026, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 2026, 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 16, 2026.

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 19, 2026. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2026. The Response was filed with the Center on July 9, 2026. On July 16, 2026, the Complainant requested suspension of the proceedings due to settlement negotiations, and

the proceedings were suspended on the same date. As the Parties did not reach settlement the proceedings were reinstituted on September 10, 2026.

The Complainant submitted an unsolicited supplemental filing on September 10, 2026. The Respondent submitted an unsolicited supplemental filing on September 16, 2026.

The Center appointed Steven A. Maier as the sole panelist in this matter on September 18, 2026. 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 United Kingdom-based retailer of clothing, beauty, home and food products. It operates physical retail outlets, including food sections and stand-alone food outlets under branding including “M&S FOOD”.

The Complainant is the owner of registered trademarks including the following:

- United Kingdom trademark registration number 900211037 for the word mark M & S, registered on January 14, 2003 in numerous International Classes;
- United Kingdom trademark registration number 2472144 for the word mark M & S SIMPLY FOOD, registered on June 13, 2008, in numerous International Classes; and
- European Union trademark registration number 010903508 for the word mark M & S SIMPLY FOOD, registered on September 3, 2015, in numerous International Classes.

The Complainant operates a website at “www.marksandspencer.com”, and also maintains the domain name <mands.com>, which redirects to that website.

The disputed domain name was registered on December 15, 2021.

There is no evidence that the disputed domain name has ever resolved to any active website.

The Complainant provides evidence that the disputed domain name has resolved to a webpage operated by the Registrar, offering the disputed domain name for sale as a “Premium Domain”, at an asking price of USD 20,000.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it is known as an iconic British retailer, and that its “M&S FOOD” branded outlets represent one of the most popular British supermarkets. It claims overall group revenues of GBP 13.8 billion in 2025, with GBP 9 billion attributable to food sales in 2024/25.

The Complainant states that it employs approximately 72,000 individuals in the United Kingdom, and approximately 81,000 worldwide.

The Complainant submits that it operates over 1,000 physical stores in the United Kingdom, of which approximately 300 are branded “M&S FOOD” or “M&S SIMPLY FOOD”. It exhibits press coverage, including reference to “the success of M&S Food brand”, and to an advertising slogan: “This is not just food, this is

M&S Food". It states that that slogan is well known in the United Kingdom, and that a YouTube video of its 2025 Christmas advert featuring the slogan obtained over 280,000 views in just five months.

The Complainant states that it has used the name "M&S Food" since 1931, and provides evidence of its current "M&S FOOD" store branding. It contends that, as a result of its promotion and the public recognition of that brand, it has obtained unregistered trademark rights in the mark M&S FOOD alongside its other trademark registrations. It contends, in particular, that that mark functions to indicate a single origin and is a stand-alone brand identifier.

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

The Complainant submits that the disputed domain name is confusingly similar to its registered and unregistered trademarks, including M & S and M&S FOOD. It contends that, since the ampersand in M & S cannot be incorporated in a domain name, the string "mands" is a domain-appropriate rendering of its M & S trademark, and that the addition of the word "food" to that trademark does not prevent a finding of confusing similarity, and indeed increases that likelihood in view of the Complainant's business of food retail.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the Respondent has not commonly been known by the disputed domain name, and that the Respondent is making neither bona fide commercial use, nor legitimate noncommercial or fair use, of the disputed domain name. It contends that, on the contrary, the Respondent's offer to sell the disputed domain name for USD 20,000 demonstrates that it is seeking to make financial gain from the disputed domain name, which incorporates the Complainant's well-known trademarks.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

The Complainant submits that the Respondent acquired the disputed domain name primarily for the purpose of selling it to the Complainant for a sum in excess of its document out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy). The Complainant contends that there can be no explanation for the Respondent offering the disputed domain name for sale for USD 20,000 other than to target the Complainant's goodwill in its well-known M&S FOOD brand.

The Complainant submits, in the alternative, that the Respondent has used the disputed domain name to create a likelihood of confusion with the Complainant's trademarks (paragraph 4(b)(iv) of the Policy). The Complainant says that the Respondent's choice of the disputed domain name cannot be random or coincidental, and that the Respondent registered the disputed domain name many years after the Complainant's business and reputation had become established. The Complainant contends that the Respondent could not simply have ignored the widespread presence and reputation of the Complainant's trademarks, and that a basic Internet search would have revealed those trademarks in any event.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent states that: "I acknowledge that the Complainant owns substantial trademark rights in M&S and M&S FOOD". He contends, however, that the disputed domain name was not registered because of the Complainant, or with any intent to exploit its reputation.

The Respondent states that he operates the Respondent company, which is a commercial fishing operation located in the west of Scotland. He states that he wished to expand his business into sales, and that in 2021 he was approached by one Mark Ward, with the idea of creating a seafood truck to sell fish supplied by his fishing business. The Respondent states that he also invited his cousin, Shaun Phillips, to become involved in that venture, with a long-term ambition of creating an independent food brand capable of expanding into

online sales. He states that, while the name of this project originated as “Marks and Shaun Foods”, it was thought that the shortened trading style, “M and S Food”, would be better suited to future expansion and diversification. Having investigated the domain name <msfood.com> and finding it to be taken, the participants settled upon the disputed domain name, which was a natural result of their branding exercise and had nothing to do with the Complainant.

The Respondent exhibits various documents which he submits to support his genuine business plan, and demonstrate expenditure incurred in that regard. These documents include:

- a photograph of a food truck, which appears to be labelled “M-S Seafood Shack”, with a fish logo, and stating opening times;
- an invoice dated January 26, 2022 from a design company to the Respondent company, comprising a “full brand pack”, one page website, stationery and a vehicle wrap design, for the total price of GBP 4,098 plus VAT;
- a web page mock-up headed “M and S Food Seafood Shack”, with a fish logo, and including a picture of the food truck referred to above, images of menu options, a photograph of “Mark and Shaun” and opening times;
- various designs for “M and S Food” and “M and S Seafood Shack” plus fish logos;
- a mock-up menu, featuring various fish and seafood options together with prices.

The Respondent submits that none of these items resemble the Complainant’s branding, website or presentation, and that they clearly evidence an independent business.

The Respondent states that a dedicated food truck was purchased in connection with the business, which remains in his possession as at the date of the Response. He submits that the project proceeded more slowly than anticipated, as suitable trading location could not be agreed and other commercial priorities intervened, although the underlying business concept has never been abandoned.

The Respondent submits that the disputed domain name was neither registered nor used in bad faith, and cites among other matters that there was no website pretending to be the Complainant, no copying of the Complainant’s branding or logos, no redirection of the Complainant’s customers to competitors, and no use of the disputed domain name for phishing or deceptive emails. The Respondent adds that he has never contacted the Complainant seeking to sell the disputed domain name, or otherwise demanded any payment from the Complainant.

With regard to the listing of the disputed domain name at a price of USD 20,000, the Respondent states that, since the disputed domain name remained registered but unused: “Like many unused business assets, it subsequently appeared on a public aftermarket platform”. The Respondent contends that the existence of that listing does not alter the genuine reason for which the disputed domain name was originally registered.

C. Parties’ Supplemental Filings

Complainant

The Complainant submits that a supplemental filing should be permitted in the proceeding, since it could not have known of the Respondent’s submissions concerning a legitimate business venture at the time it filed the Complaint.

While unsolicited supplemental filings are generally discouraged in proceedings under the UDRP, the Panel determines (in exercise of its general powers under paragraph 10 of the Rules) that the reason advanced by the Complainant constitutes an exceptional circumstance which justifies the filing of a supplemental

submission. The Panel therefore admits the Complainant's supplemental filing and the Respondent's supplemental filing in reply.

The Complainant submits that, despite the Respondent's submissions concerning a food truck venture, and the involvement of individuals named Mark and Shaun, no compelling or logical reason has been advanced as to why the Respondent ultimately settled upon the disputed domain name, which closely resembles the Complainant's well-established M&S FOOD branding.

The Complainant points out that neither Mark Ward nor Shaun Phillips is a registered Director of the Respondent company, and submits that there is no evidence to corroborate the Respondent having entered into a business partnership with those individuals.

With regard to the Respondent's business concept, the Complainant comments that no trading activity has ever occurred, the food truck was never launched, and there has been no discernible use of the disputed domain name since its registration. The Complainant questions the absence of even a "coming soon" page.

The Complainant submits that the listing of the disputed domain name for USD 20,000 is difficult to reconcile with the Respondent's submissions concerning a future business venture, or with his assertion that the business concept had never been abandoned.

The Complainant adds that, for the disputed domain name to have appeared on an aftermarket sales platform, the Respondent must have made a conscious decision to list the disputed domain name at the price in question.

The Complainant submits that the Director of a Scottish company cannot credibly claim to have been unaware of the Complainant's M&S FOOD and related brands, and notes that the Respondent does not in fact deny knowledge of the Complainant's rights.

Respondent

The Respondent states that the intended food truck venture was separate from the Respondent company's main business, and the fact that Mark Ward and Shaun Phillips were not Directors of the company does not contradict their involvement.

The Respondent reiterates that the project was delayed for the reasons stated in the Response. He produces evidence by way of internal emails that it was revisited in June 2025, by way of Shaun Phillips contacting the same design company as previously, indicating a wish to rebrand the venture as, e.g., <candsfood.com>. The designer advises Mr. Phillips that, in these circumstances, the disputed domain name can be allowed to expire, or be listed for sale, which is "quite common".

The Respondent states that, during a subsequent discussion of options for the disputed domain name, the designer suggested listing the disputed domain name for USD 20,000, pending a final decision about the food truck venture being made.

The Respondent states that he "does not suggest that he was unaware of Marks & Spencer as a well-known UK retailer". He reiterates that the Complainant was not, however, the reason for registering the disputed domain name.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

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

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights in the mark M & S. The Panel accepts the Complainant's submission that the string "mands" is equivalent to that trademark. The disputed domain name comprises the string "mands" together with the dictionary term "food", which does not prevent the Complainant's trademark from being recognizable within the disputed domain name. The disputed domain name is therefore confusingly similar to the Complainant's M & S trademark. WIPO Overview of WIPO Panel Views on Select UDRP Questions (["WIPO Overview 3.1"](#)) section 1.7.

The Complainant also claims unregistered or common law trademark rights in the mark M&S FOOD. Based on the evidence submitted by the Complainant, the Panel accepts that the mark M&S FOOD has become a distinctive identifier which consumers associate with the Complainant's goods and/or services. The Panel also takes "judicial notice" of the fact that the mark M&S FOOD is widely known in the United Kingdom, to the extent that it could reasonably be regarded as a household name.¹ The Panel therefore finds that the Complainant has unregistered or common law rights in the mark M&S FOOD, and that disputed domain name reproduces that mark in its entirety, differing only by the omission of the ampersand that cannot ordinarily be reproduced in a domain name.

The first element under the Policy is therefore established.

B. Rights or Legitimate Interests

As recognized in paragraph 4(c)(i) of the Policy, a respondent may establish rights or legitimate interests in respect of a disputed domain name where it can demonstrate "before any notice to you of the dispute, your use of, or 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".

The Respondent submits that it registered the disputed domain name in connection with its proposed food truck venture, which comprised a bona fide offering of goods or services for the purposes of the Policy. He further contends that the disputed domain name was derived from the names Mark Ward and Shaun Phillips, being participants in the proposed venture.

The question for the Panel in these circumstances is whether the Respondent's claimed offering was in fact bona fide, and not merely a pretext for targeting the Complainant's trademark rights.

Here, the Respondent has produced evidence of preparations to use the disputed domain name in connection with a food truck business under the name "M&S Food Seafood Shack", including a branded food truck, an invoice from a web designer, and mock-ups of a web page and menu. However, while the Panel accepts that the materials exhibited constitute some evidence of preparatory activity, it does not accept that such preparations establish a bona fide offering for the purposes of the Policy.

The disputed domain name is not merely similar to the Complainant's M&S FOOD trademark, but effectively reproduces it in its entirety, and the Panel finds it implausible that a trader seeking to establish a food business in the United Kingdom would innocently or coincidentally settle upon a domain name which reproduces a well-known trademark in the same sector in this manner. Accordingly, considering matters in the

¹ [WIPO Overview 3.1](#), section 4.8.

round, and not least the well-known nature of the Complainant's M&S FOOD trademark, the Panel finds on balance that the Respondent's evidence of its preparations to use the disputed domain name for a food truck venture do not reach the threshold of establishing bona fide business preparations.

The Panel also notes that the evidence produced by the Respondent dates from January 2022, and that the Respondent acknowledges that the food truck project did not proceed (although it may have been revisited, albeit without any clear outcome, in June 2025). As observed in [WIPO Overview 3.1](#), section 2.11:

"Although the historical use of a domain name may be relevant to assessing the parties' claims, panels tend to assess claimed respondent rights or legitimate interests at the time of the filing of the complaint, but would also consider any evidence of past use, including its veracity and surrounding context."

The Panel finds that, whatever preparations may have existed in 2022, the evidence falls short of demonstrating any genuine and ongoing business plan at the date of the Complaint. The disputed domain name was, on the contrary, listed for sale for USD 20,000. While the sale of a disputed domain name may give rise to rights or legitimate interests in certain limited circumstances, these most commonly relate to the activities of domain name investors, and to cases where, for example, a domain name represents an invented word, acronym or abbreviation, or comprises a dictionary term which is capable of legitimate use in connection with its ordinary meaning, and without trespassing upon third party trademark rights.

In this case, the Respondent provides no explanation of its intended market for the disputed domain name, nor any explanation of how a third-party purchaser other than the Complainant might make legitimate use of the disputed domain name without impacting upon the Complainant's rights in the M&S FOOD trademark, which the Respondent itself acknowledges to be well known. In the circumstances, the Panel considers it highly unlikely that the Respondent could have anticipated substantial demand for the disputed domain name from parties unconnected with the Complainant. The Panel does not therefore consider that his offer of the disputed domain name for sale gives rise to rights or legitimate interest in it.

The Panel therefore finds the second element under the Policy to be established.

C. Registered and Used in Bad Faith

As observed above, the Panel finds the Complainant's trademark M&S FOOD to be well known in the United Kingdom as an identifier of the Complainant's food retail services. Moreover, the Respondent does not deny his knowledge of the Complainant's trademarks or their reputation at the date the disputed domain name was registered. While it is his case that his choice of the disputed domain name had, nevertheless, nothing to do with the Complainant, this does not provide an adequate answer in a case where, as the Respondent must well have known, Internet users and other individuals, based in the United Kingdom at least, would be highly likely to assume the disputed domain name was owned or controlled by, or otherwise legitimately affiliated with the Complainant.

Having considered the Respondent's explanation, the Panel does not find it sufficiently persuasive to rebut the strong indication of targeting arising from the exact reproduction of the Complainant's well-known M&S FOOD trademark.

Indeed, the Panel also finds the Respondent's explanation for its choice of the disputed domain name, i.e. derived from "Mark and Shaun Foods", to be unconvincing. There is no proper explanation of why, in what manner, or on what basis, the individuals named Mark and Shaun became involved in a venture with the Respondent (and/or the Respondent company), and it is also notable that, after seemingly detailed discussions between the participants about an appropriate domain name, the name they should fix upon happened precisely to replicate the trademark of a well-known United Kingdom food retailer.

In all the circumstances, the Respondent's explanation for his choice of the disputed domain name appears to the Panel to be contrived and lacking in credibility.

The Respondent's commentary on the offer to sell the disputed domain name for USD 20,000 is also implausible in the Panel's view. For one matter, the Respondent's evidence that the proposed seafood truck venture (and already branded seafood truck) had not been abandoned is inconsistent with the proposed sale of the disputed domain name. Secondly, the Panel notes the Respondent's use of the passive wording to the effect that the disputed domain name "subsequently appeared on a public aftermarket platform", linked to his submissions that it was the web designer who suggested both offering the disputed domain name for sale and its asking price. Further, as observed above, there is no explanation from the Respondent of why potential purchasers unconnected with the Complainant could have been expected to express interest in the disputed domain name for the price requested by the Respondent.

In summary, therefore, the Respondent registered the disputed domain name, knowing it to be identical to the Complainant's well-known M&S FOOD trademark. The Panel finds his explanation for his choice of the disputed domain name to be contrived and unconvincing, and considers that, even if the Respondent incurred demonstrable expenditure in connection with the proposed venture, such expenditure does not necessarily establish good faith if the venture itself was predicated upon a name selected because of its association with the Complainant's trademark.

Furthermore, the Respondent subsequently offered the disputed domain name, being identical to the Complainant's well-known M&S FOOD trademark, for sale for USD 20,000, in circumstances where, in the view of the Panel, it is difficult to conceive of potential purchasers of the disputed domain name other than parties genuinely associated with the Complainant.

The Panel finds on balance that, whether or not the Respondent's primary purpose in registering the disputed domain name was resale, the disputed domain name was registered and used with the intention of taking unfair advantage of the Complainant's well-known trademark.

The Respondent's protestations that there was no website pretending to be the Complainant, no copying of the Complainant's branding or logos, no redirection of the Complainant's customers to competitors, and no use of the disputed domain name for phishing or deceptive emails, are immaterial in the Panel's view, as is the fact that the Respondent never contacted the Complainant directly seeking to sell the disputed domain name. None of these matters detract from the Respondent's bad faith intent in registering and using the disputed domain name in the circumstances described above.

The Panel therefore finds that the third element under the Policy is established.

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 <mandsfood.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 23, 2026