

ADMINISTRATIVE PANEL DECISION

Samyang Foods Inc. v. Bananatok Develop, Bananatok
Case No. DIO2024-0037

1. The Parties

The Complainant is Samyang Foods Inc., Republic of Korea, represented Haseltine Lake Kempner LLP, United Kingdom.

The Respondent is Bananatok Develop, Bananatok, Republic of Korea, represented by Peng LIU, China.

2. The Domain Name and Registrar

The disputed domain name <pepebuldak.io> is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2024. On November 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 26, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 27, 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 amended Complaint on November 27, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 December 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 23, 2024. The Response was filed with the Center on December 21, 2024.

The Center appointed Moonchul Chang as the sole panelist in this matter on January 6, 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.

On January 10, 2025, the Panel issued Administrative Panel Procedural Order No. 1, requesting further information from both Parties; namely:

1. Complainant is requested to provide a statement responding to the Respondent's allegation of applying rules of case law regarding the BULDAK mark rendered by the Korean Patent Court on April 24, 2008 (case No. 2007Heo8047). The Respondent asserts that in the Korean jurisdiction the term "buldak" has been recognized as a generic word according to the judgment of the Patent Court and then the Complainant does not possess exclusive rights to the use of the word "buldak".

2. Respondent is requested to clarify the reason why the Respondent chose the disputed domain name, including the term "buldak".

Both Parties replied on January 19, 2025, and January 20, 2025. Respondent replied to Complainant's Submission on January 21, 2025. Complainant replied to Respondent's Further Submission on January 22, 2025.

4. Factual Background

The Complainant, Samyang Foods Inc. was founded in 1961 and gained widespread recognition with its Samyang Ramen, the first instant ramen brand in Republic of Korea, launched in 1963. In addition, the Complainant also became world widely known for its BULDAK brand of spicy instant noodles launched in 2012. As of 2024, the BULDAK noodles are exported to around 100 countries around the world.

The Complainant is the owner of BULDAK trademarks in a number of jurisdictions, including among followings:

- United States of America Reg. No. 6,594,452 registered on December 21, 2021, for the trademark BULDAK and Design;
- United Kingdom Reg. No.00003574282 registered on June 11, 2021 for the trademark BULDAK;
- China Reg. No.62319664 registered on October 28, 2022 for the trademark BULDAK .

The disputed domain name was created on August 2, 2024. It resolves to a website that provides open cryptocurrency franchise services.

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.

The Complainant contends that:

(a) the disputed domain name is confusingly similar to its trademark BULDAK as it entirely incorporates its trademark and the addition of the term "pepe" does not prevent a finding of confusing similarity. Since the word "pepe" is a descriptive word, the distinctive part of the disputed domain name is Complainant's trademark BULDAK;

(b) the Respondent has no rights or legitimate interests in the disputed domain name as it is not known under that name, is not related in any way with the Complainant, and has never been authorized or licensed

by the Complainant to use the trademark BULDAK. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. The Respondent registered and has used the disputed domain name to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with the Complainant or its BULDAK trademark.

Further the Respondent does not disclose its relationship with the Complainant, as that results in consumers falsely believing that the Complainant owns the disputed domain name. In addition, the Respondent has not been commonly known by the disputed domain name;

and (c) the disputed domain name was registered and is being used in bad faith. In the consideration of reputation of Complainant's trademark predating the registration of the disputed domain name, it is highly likely that the Respondent was aware of the Complainant and its BULDAK trademark. In addition, the Respondent has used the disputed domain name with the intent, for commercial gain, to misleadingly divert consumers to the website associated with the disputed domain name. The Respondent has also been mimicking the branding of the Complainant through use on the website hosted on the disputed domain name. Further, the Respondent's use of privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual registrant is considered as an indication of bad faith.

In the additional submission to the Panel Order, the Complainant contends that (d) the Respondent has a tendency to exploit well known trademark and copyright without the owner's consent, to misleadingly divert consumers to the website hosted on the disputed domain name for its own commercial gain. At present the trademark BULDAK is owned by the Complainant and the "PEPE THE FROG" mark is currently registered in China by Momo Entertainment Co., Ltd.

B. Respondent

The Respondent contends that:

(a) the disputed domain name is not identical to the Complainant's trademark. The main part of the disputed domain name <pepebuldak.io.> is BULDAK. The term BULDAK (불닭) refers to "fire chicken" or "spicy chicken". As the Korean Patent Court held that term BULDAK is a generic word, the Complainant could not obtain the ownership of the BULDAK trademark in the Republic of Korea. As a result, the Complainant does not possess exclusive right to the use of the word BULDAK in Korea.

(b) the Respondent has rights or legitimate interests in the disputed domain name. Since the Respondent registered the disputed domain name it has been used for the bona fide commercial purpose of offering open franchise services. In addition, upon receipt of the Complaint, in order to avoid any potential confusion, the Respondent immediately added the following disclaimer to the webpage; "pepeBuldak is unrelated to any famous ramen companies in Korea". Regarding the color scheme and the character's hairstyle included in the Respondent's website, the character in the Complainant's mark is a chicken cartoon, whereas the character featured on the Respondent's webpage is a frog cartoon. The two characters are distinct and do not bear any resemblance to each other.

(c) the disputed domain name was registered and is being used in good faith. At the time of registering the dispute domain name, the Respondent was aware that the term "BULDAK" is a generic and could be used by anyone. The Respondent has no intention to associate its open franchise service with the Complainant's chicken ramen brand. Whereas the Complainant's business is the sale of ramen noodles, the Respondent operates an open meme coin franchise service on the "pepebuldak" website and does not engage in the sale of any goods. The Respondent's use of the disputed domain name does not result any damage to the Complainant's business or reputation of its trademark. In addition, the Respondent's actions in concealing its name and contact information are not motivated by any malicious intent. It is common practice among many meme coin projects to conceal the names of the creators and the associated company to avoid regulatory scrutiny and to foster community trust.

In the additional submission to the Panel Order, (d) the Respondent contends that the disputed domain name "pepebuldak" is combined by the terms "Pepe" and "Buldak" to associate with a meme coin concept of

“Pepe” and an open franchise focused on spicy chicken of “Buldak”. The inclusion of the term “Pepe” in the disputed domain name reflects the creative endeavor and of term “Buldak” (불닭) was to promote the authentic concept of spicy chicken.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainants must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that: (i) the disputed domain name is identical or confusingly similar to the Complainant’s trademark or service mark; 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 or is being used in bad faith.

Given that the Policy is based largely on the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel considers UDRP precedent, and thus the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), to be relevant to the present proceeding and will refer to it where appropriate.

A. Identical or Confusingly Similar

The disputed domain name <pepebuldak.io> includes the Complainant’s trademark BULDAK in its entirety together with addition of the term “pepe”. Where the Complainant owns registered trademark BULDAK, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. (Section 1.2.1 of [WIPO Overview 3.0](#)). Noting the global nature of Internet and Domain Name System, the location of the trademark and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. (Section 1.1.2 of [WIPO Overview 3.0](#)). Such factors may bear on a panel’s determination whether the respondent has registered and used the domain name in good or bad faith under the second and third element of the UDRP. In addition, adding the term “pepe” does not prevent a finding of confusing similarity. (Section 1.8 of [WIPO Overview 3.0](#)). In addition, the generic Top-Level Domain (“gTLD”) “.io” is disregarded under the confusing similarity test. (Section 1.11.1 of [WIPO Overview 3.0](#)).

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 (i.e., pepe) 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.

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of [WIPO Overview 3.0](#)). In the case, to demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following: (i) before any notice of the dispute, the respondent’s 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; or (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no

trademark or service mark rights; or (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

First, the Complainant contends that the composition of the Respondent's disputed domain name carries a risk of implying that it was affiliated with BULDAK because the disputed domain name is confusingly similar to the Complainant's trademark. On the other hand, the Respondent asserts that the term BULDAK refers to "fire chicken" and "pepe" referring to "Pepe", refers to a comic character of the "Pepe Frog".

The Respondent also contends that since the Korean Patent court held that BULDAK mark is a generic term, anyone can use the BULDAK mark. In addition, the Respondent has used the disputed domain name to operate the website for commercial purpose of offering open cryptocurrency franchise services. Regarding the characters included in the Respondent's website, the Respondent asserts that the two characters and designs are distinct and do not bear any resemblance to each other because the character in the Complainant's trademark is a chicken cartoon, whereas the character featured on the Respondent's webpage is a frog cartoon for open cryptocurrency franchise services.

In this circumstance under the evidence submitted by the Parties, the Panel concludes that the Complainant has not satisfied second element under paragraph 4(a) of the Policy in the present case.

C. Registered or Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". Thus, for the Complaint to succeed, a UDRP panel must be satisfied that a domain name has been registered and is being used in bad faith. These requirements are conjunctive; each must be proven or the Complaint fails. In addition, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith (Section 3.2.1 of [WIPO Overview 3.0](#)).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. (Section 3.2.1. of [WIPO Overview 3.0](#).)

As mentioned above in 6.B, given the Korean Patent Court's finding regarding the status of "balduk" as a mark and the Respondent's arguments concerning fair use of the term, which seems implied given the nature of the Respondent's website, the Panel does not find any evidence that the disputed domain name has been registered and is being used in bad faith with intention of cybersquatting. Accordingly, the Panel finds that the Complainant has failed to establish the third element of the Policy.

The Panel notes that to the extent the Complainant may feel it has a cause of action under national law, on which the Panel makes no comment, the Parties are free to engage in court proceedings if they see fit.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Moonchul Chang /

Moonchul Chang

Sole Panelist

Date: February 11, 2025