Decision for dispute CAC-UDRP-106504

Case number	CAC-UDRP-106504
Time of filing	2024-05-14 09:27:05
Domain names	upfiield.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Upfield Europe B.V.

Complainant representative

Organization	Stobbs IP

Respondent

Name	User User

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, trading under the company name Upfield Europe B.V., is owner of several trademarks registered worldwide, consisting of the term "UPFIELD", including but not limited to:

- the US trademark "UPFIELD", serial no. 79253739, registration no. 5974506, filing date: 1 October 2018, registration date: 4 February 2020, classes: 5, 29, 30, 35;
- the International trademark "UPFIELD", registration no. 1454275, registration date: 1 October 2018, classes: 5, 29, 30, 35;
- the EU trademark "UPFIELD", registration no. 017963013, filing date: 28 September 2018, registration date: 15 March 2019, classes: 5, 29, 30, 31, 32, 33, 35, 42, 43.

The Complainant is also owner of the domain name <upfield.com> registered since 20 November 2001.

The above-mentioned rights are hereinafter referred to as "the UPFIELD Trademark".

FACTUAL BACKGROUND

The Complainant is a global dairy alternative company, and a leader in the sourcing, production, and sale of plant based consumer products. The Complainant’s business can be traced back to 2018, when it spun off from the British multinational consumer goods

company, Unilever.

The Complainant currently employs more than 4,800 employees globally and has sold more than $1 billion worth of products promoting health benefits, through seven far-reaching brands, such as Flora, Violife, Becel, and Rama.

The Complainant continues to hold a leading position in the global margarine market, with more than 50% share of the margarine markets in Germany, the Netherlands, the U.K., the U.S, and 40 other markets.

It owns offices in 50 countries, with the main offices in the U.K. and the Netherlands. It also has numerous subsidiaries around the world, including but not limited to subsidiaries in Colombia, Germany, and Sweden.

The Complainant has wide online media presence, with wide coverage on online news agencies and business articles covering its various business dealings. Dealings such as the acquisition of Arivia, owner of the brand Violife, a global leader in the vegan market, in 2020, as well as the purchase of a minority stake in Alternative Foods London in 2022, were reported and commented on by various media outlets. In just the first four months of 2024, the Complainant has featured in articles from the Financial Times and Bloomberg.

The Complainant has further obtained a substantial following and endorsement on social media.

The Complainant's main website can be found at https://upfield.com/, owned by the Complainant since 2018 and used for the purposes of its main website for the past 6 years.

The disputed domain name was registered on 20 March 2024 by User User, residing in Maricopa, AZ, the United States. It does not resolve to any active website. However, it has been used to send fraudulent emails impersonating the Complainant and aimed to solicit payments and/or obtain sensitive or confidential personal information from the Complainant's customers and business partners.

The facts asserted by the Complainant have not been contested by the Respondent.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that she deems applicable.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the Complainant to prevail:

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.

If all three elements are met by the Complainant, the domain name registration is ordered to be transferred to the Complainant. If one or more elements are not met, the Complaint is denied, and the domain name registration remains intact.

Therefore, the onus of meeting the above threshold is incumbent on the Complainant. The evidentiary standard in UDRP disputes is the "balance of probabilities", meaning that a Party should demonstrate to the Panel's satisfaction that it is more likely than not that a claimed fact is true.

I. THE COMPLAINANT'S RIGHTS AND THE CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARKS

The first UDRP element functions primarily as a standing requirement. Where a complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the standing requirement of having trademark rights for purposes to initiate a UDRP dispute.

Once a complainant has established to have right in a trademark or service mark, the panel turns to the assessment of identity or confusing similarity of the disputed domain name to the trademark or service mark in which the complainant has rights.

The test for identity or confusing similarity involves comparing the alpha-numeric domain name and the textual components of the relevant mark to assess whether the mark is recognizable within the domain name. When a domain name wholly incorporates the complainant's trademark or at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name is considered confusingly similar. A domain name consisting of a common, obvious, or intentional misspelling of a trademark is confusingly similar to the relevant mark for purposes of the first element (so called typosquatting). Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersion of other terms or numbers. Furthermore, the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the domain name and the complainant's trademark as it is a technical requirement of the registration.

In this case, the Complainant has established that it has rights in the UPFIELD Trademark for purposes of paragraph 4(a)(i) of the Policy.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark because it wholly incorporates the distinctive part of such mark, namely the term "UPFIELD". The addition of the letter "I" to the Complainant's registered and well-known mark neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. The disputed domain name is a typosquatted version of the Complainant's UPFIELD Trademark.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names. If the 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 names.

The Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trademarks. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The disputed domain name is a typosquatted version of the Complainant's UPFIELD Trademark, and, thus, is confusingly similar to such mark. Moreover, the Complainant has provided documentary evidence showing that, before any notice of the dispute, the Respondent had used the disputed domain name to send emails impersonating the Complainant and initiate phishing attempts targeting the Complainant's customers and business partners in order to potentially obtain payments and correspondence originally meant for the Complainant, as well as the customers and business partners' personal information:

> "Dear All, I hope this email finds you well. This is regarding an appeal to substitute the previous payment method in all of our invoices for definite reasons starting with immediate effect. We have moved our business to a new financial entity. Please be advised that all payments must be remitted to our global account. Hence, we will no longer accept payments via previous payment channels. See the attached for new banking information. Please update your records and advise accordingly. If you

have any questions, do not hesitate to contact us. Regards,"

This is clearly not a bona fide offering of goods and services or fair use of the disputed domain name.

Panels have categorically held that the use of a domain name for illegal activity (including phishing, unauthorised account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Complainant has established that it has rights in the UPFIELD Trademark since 2018. Such trademark predates the registration of the disputed domain name (20 March 2024) and is well-known worldwide. It is valid in the territory where the Respondent is residing (the United States).

The Panel has considered the available record and found compelling indicia that the Respondent has registered and is using the disputed domain name in bad faith.

First of all, the Respondent used fake data (name: User, surname: User) to conceal his identity when he registered the disputed domain name. This is also in breach of the Respondent's registration agreement.

Secondly, the Respondent has registered the disputed domain name which is a typosquatted version of the Complainant's UPFIELD Trademark. Indeed, it contains in its entirety the Complainant's UPFIELD Trademark with the addition of the letter "I", creating in such way a likelihood of confusion with such mark. Given the notoriety of the Complainant's activities and its mark registered and used worldwide, it is unlikely that the registration of the confusingly similar disputed domain name may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark.

Furthermore, the disputed domain name has been used by the Respondent to send phishing emails impersonating the Complainant (see in details under para. II. above). Therefore, by using the disputed domain name, the Respondent has intentionally attempted to target, for commercial gain, the Complainant’s customers and business partners by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's activities.

The employment of intentional misspelling during the registration of disputed domain name by the Respondent, corroborated by the use of the domain name to send deceptive emails to solicit payments and/or obtain sensitive or confidential personal information from the Complainant's customers and business partners, is manifestly considered by this Panel evidence of bad faith.

In the view of the above, the Panel finds that the Complainant has met the third requirement of the paragraph 4(a) of the Policy.

Therefore, the disputed domain name is ordered to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **upfiield.com**: Transferred

PANELLISTS

Name	**Ivett Paulovics**

DATE OF PANEL DECISION 2024-06-10

Publish the Decision