

ADMINISTRATIVE PANEL DECISION

Utz Quality Foods, LLC v. Super Privacy Service LTD c/o Dynadot / Luquan
Case No. D2022-0844

1. The Parties

The Complainant is Utz Quality Foods, LLC, United States of America (“United States”), represented by Cozen O’Connor, United States.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / Luquan, China.

2. The Domain Name and Registrar

The disputed domain name <utzsnackcentral.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2022. On March 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 14, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2022, 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 16, 2022.

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 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2022.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on April 21, 2022. 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 snack food company doing business in the United States since 1927.

The Complainant holds the following trade mark registrations (the "Trade Marks"):

- United States word mark UTZ, registered on October 7, 1969 under Registration No. 878,317, claiming first use in commerce since May 30, 1927;
- United States word mark UTZ, registered on January 26, 2010 under Registration No. 3,742,446; and
- United States word/device mark UTZ, registered on January 26, 2010 under Registration No. 3,742,447.

The Complainant registered the domain name <utzsnacks.com> on October 1, 1996, which resolves to a website offering products of the Complainant for sale, including products bearing the Trade Marks.

The Domain Name was registered on January 3, 2022, and it resolves to a website offering pornographic images and links to gambling websites and pornographic websites.

5. Parties' Contentions

A. Complainant

According to the Complainant, the Domain Name is confusingly similar to the Trade Marks since it includes the dominant element "UTZ" of the Trade Marks and the addition of the terms "snackcentral" does not distinguish the Domain Name from the Trade Marks. In fact, the Complainant submits, the addition of "snackcentral" increases the likelihood of confusion among consumers who will, upon viewing the Domain Name, assume that the website to which it resolves will provide information or content related to the Complainant's snack products, and that the Domain Name is affiliated, associated with or somehow approved by the Complainant, when in fact it is not.

The Complainant states that the Respondent is not affiliated with the Complainant, and that there is no evidence to suggest that the Respondent has registered the Domain Name to advance rights or legitimate interests or for the *bona fide* offering of legitimate goods or services. The Complainant contends that the Respondent cannot claim to be commonly known by the Domain Name or similar names related thereto, because it has used a privacy service to register the Domain Name anonymously while the website under the Domain Name contains gambling references and pornographic content as well as numerous links to gambling services and pornography.

According to the Complainant, the Respondent has registered and is using the Domain Name in bad faith as set out in paragraph 4(b) of the Policy, and has intentionally attempted to attract, for commercial gain, Internet users to its website under the Domain Name, by creating a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation, or endorsement of that website or of a product or service on the website or location. The Complainant points out that the Respondent registered the Domain Name on January 3, 2022, which post-dates the Complainant's registration for and use of the Trade Marks by nearly a century. In addition, the Complainant submits, by using the Domain Name for a website containing pornographic and gambling related contents, the Respondent has attempted to take commercial advantage of the Trade Marks and their commercial reputation and to trade off the Complainant's goodwill. Moreover, the Complainant contends that the Respondent's use of pornographic content displayed on the website under the Domain Name constitutes tarnishment of the Trade Marks because, while consumers will not

confuse the content with the Complainant, use thereof in connection with the Trade Marks in the Domain Name tarnishes and harms the Complainant's reputation.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the element "UTZ" of the Trade Marks in its entirety. The addition of the terms "snackcentral" does not prevent a finding of confusing similarity (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8). The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has a right or legitimate interest in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the dominant element "UTZ" of the Trade Marks in its entirety and is confusingly similar to the Trade Marks, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name. Furthermore, in view of the fact that the Domain Name resolves to a website which provides content of a pornographic nature and contains links to websites providing gambling services and to websites with pornographic content, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, nor does such use constitute a *bona fide* offering of goods or services.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name, the Respondent was or should have been aware of the

Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some 53 years after the registration of the earliest of the Trade Marks;
- the Respondent has incorporated the dominant element "UTZ" of the Trade Marks along with the terms "snackcentral" in the Domain Name, while most products of the Complainant fall in the category of snack food; and
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- use of a privacy service to hide the identity of the Respondent;
- the lack of a Response to the Complaint; and
- the use of the website to which the Domain Name resolves for (links to websites with) pornographic content and gambling services.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith.

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 <utzsnackcentral.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: May 5, 2022