

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2023-0001

Also in PDF C2023-0001

1. The Parties

The Complainant is New England Authentic Eats LLC [“PAPA GINO’S”], having its office at 600 Providence Highway Dedham, Massachusetts 02026, United States of America. The Complainant has initiated the Complaint vide their authorized representative, Khalid Daudpota & Co, at Suite No. 306, Horizon Tower, Block 3, Clifton 75600, Karachi, Pakistan.

The Respondent’s name is Tariq Ahmed Khan with its address at Shop No. 1201/22, Liberty Market, Opp. Hassan Arcade, Multan Cantt, Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <papaginos.pk.>, hereinafter referred to as the Disputed Domain Name [“the DDN”]. [Vide email dated Thursday 22 December 2022, PKNIC has informed DNDRC that the Disputed Domain Name was registered by PAPA GINO’S with the contact name, Ghulam Mustafa with its address at Dera Bohar Wala Mirza Virkan, Sheikhpura , Pakistan.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 14 December 2022.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 26 December 2022 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte, the Respondent was also issued a reminder notification on 02 January 2023. Further efforts were made to contact the number listed on the website to which the DDN was resolved. The Respondent failed to provide a response within the stipulated time period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), DNDRC appointed Mr. Sunain Qazi as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is < papaginos.pk>.

PKNIC has confirmed via their email dated 22 December 2022 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is info.ibmmtech@gmail.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

The Complainant is a company registered and existing under the laws of Delaware, United States of America, having a business office at 600 Providence Highway Dedham, Massachusetts 02026, United States of America. That the Complainant, New England Authentic Eats LLC, is a parent company for Papa Gino's and D'Angelo, which are chain Italian restaurants serving pizzas and sandwiches.

That Papa Gino's (founded in 1961), is a renowned American restaurant chain which owns, operates, and franchises one of the fastest growing and highly rated pizza restaurant chain in the United States and internationally, providing restaurant services, mainly but not limited to authentic Italian pizzas. The Complainant's website can be visited at <https://www.papaginos.com/>.

Today, the Complainant is known for serving high quality, handmade pizzas with fresh ingredients. From a single restaurant in East Boston originating in 1961, Papa Gino's has expanded over the years and now has nearly 100 restaurant outlets. The Complainant has continuously operated under its famous name and mark PAPA GINO'S since at least 1967.

That the Complainant through its operations under the brand name Papa Gino's, recorded sales revenue figures of over USD \$90,000,000 (ninety million dollars) in calendar year 2019, which highlights the popularity of the Complainant's goods and services offered under the Complainant's – PAPA GINO'S and PAPA GINO'S PIZZERIA - marks and logos among the general public and consumers.

That the Complainant have registered and been using the trademarks – PAPA GINO'S and PAPA GINO'S PIZZERIA - and have been using its logos – and – along with many other variations of these marks, and these trademarks frequently appear on the Complainant's website, mobile device applications, branches, goods and services, menu cards and social media including LinkedIn, Instagram, Twitter and Facebook:

- <https://www.facebook.com/papa.ginos>
- <https://www.instagram.com/papaginos/>
- <https://twitter.com/papaginos?lang=en>
- <https://www.linkedin.com/company/papa-gino%27s/>
- <https://play.google.com/store/apps/details?id=com.papaginos.papaginos&hl=en>
- https://apps.apple.com/us/app/papa-ginos/id408866307?fbclid=IwAR2T-VNcUzO_joMN5LIv27hpxNje7pfwPaaLoCr-KMqmrBtwSY4TnTSCE

That the Complainant's trademarks – PAPA GINO'S and PAPA GINO'S PIZZERIA – and logos – are well known to the people in the industry, its trade channels and the general public throughout the world. The Complainant has been sponsor to many sports and entertainment event. The Complainant also have been proactively involved in providing community care as part of its social responsibility (<https://www.heraldnews.com/news/20200817/fall-river-ymca-staff-thanked-for-work-they-doin-community>). Thus, the Complainant maintains a high reputation among the general public.

That the Complainant has registered its trademarks – PAPA GINO'S and its variations including PAPA GINO'S PIZZERIA in the United States of America. These trademarks have been renewed and, under United States law, are incontestable.

That in addition, the Complainant also holds a registration of trade mark – PAPA GINO'S – in Pakistan under No. 582946 in Class 43 for restaurant services.

That on 20 March 2021, the Respondent No.1 created the domain name <https://papaginos.pk>. The WHOIS search result for <https://papaginos.pk> from PKNIC WHOIS Service lists PKNIC as the registrant and the Respondent No.2 (Hetzner Online GmbH), as the domain host.

That the Respondent No.1 registered the domain name <https://papaginos.pk> in violation of the Uniform Domain Name Dispute Resolution Policy (“the Policy”) and the Rules thereto

("the Rules") and in bad faith imitating the look and feel, and colour scheme and trademarks, of the Complainant's website www.papaginos.com.

Therefore, the Complainant seeks the following remedies:

In accordance with Paragraph 4(i) of the Policy, the Complainant requests the Administrative Panel appointed in this administrative proceeding to issue a decision that the disputed domain name of: papaginos.pk be transferred to the Complainant.

B. Respondent

The complaint was duly served to the Respondent on the email provided by PKNIC, but the Respondent did not submit any response despite repeated efforts of DNDRC.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*

2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*
- iv. *Registration and use of the domain name in bad faith (a UDRP criteria).*

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*
- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming

party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the DDN, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trademark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the “Penal Code”) or any applicable criminal law?

The Complainant has stated:

It is reiterated that “PAPA GINO’S” is trademarked by New England Authentic Eats LLC, in several classes within Pakistan, as well as many countries around the world, and any domains consisting of the said name is an infringement of our intellectual property rights, thus the Domain is being used in bad faith by its current owner.

The Respondent has not provided a response to the Complainant’s contention.

The Complainant has provided a copy of a certificate of registration issued by the Government of Pakistan indicating that it has registered the trademark “PAPA GINO’S” in class 43 titled, “services for providing food and drink; temporary accommodation” in Pakistan. Documentary proof of this can be found below:

Form 0.2



GOVERNMENT OF PAKISTAN



THE TRADE MARKS REGISTRY, KARACHI

Trade Marks Ordinance 2001

CERTIFICATE of Registration of Trade Mark. Section 33(4)

Trade Mark No. 582946

Dated: 21/09/2020

Certified that the Trade Mark, of which a representation is annexed hereto has been registered in the name of NEW ENGLAND AUTHENTIC EATS LLC (whose legal address is 600 Providence Highway, Dedham, Massachusetts 02026, United States of America)

in class 43

under no. 582946

as of the date 21/09/2020

in respect of restaurant services

Sealed at my direction, this

06 SEP 2022



PAPA GINO'S

PAPA GINO'S

Note: Original representation of Mark may please be seen on right or as Annexed

(MUHAMMAD RAFIQ)
Registrar of Trade Marks

Registration is for 10 years from the date first above-mentioned and may then be renewed for a period of 10 years, and also at the expiration of each period of 10 years thereafter. (See Section 35 of the Trade Marks Ordinance 2001 and rules 45-39 (2) (b) of the Trade Marks Rules, 2004)

NOTE: Upon any change of ownership of this Trade Mark, or change in address, application should at once be made to register the change.

The Panel finds that the Complainant has submitted sufficient evidence that it has trademark rights in the word “PAPA GINO’S”. The DDN does prima facie incorporate in its entirety the registered trademark of the Complainant. In the view of the Panel, the DDN therefore infringes upon the trademark of the Complainant.

In the absence of any information provided by the Respondent, the Panel is unable to infer whether the Respondent also has rights to the term “PAPA GINO’S” that would indicate that the registration of the DDN by the Respondent was bona fide.

In view of the findings of the Panel that the DDN, which incorporates a registered trademark of the Complainant in its entirety, constitutes an infringement of the trademark of the Complainant in its entirety, the Panel, relying on the findings in *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), also finds that the registration will contravene relevant provisions of the Pakistan Penal Code.

The Panel therefore finds that the registration of the DDN is unlawful. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19).

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has used UDRP para. 4(a)(i), Rules, paras. 3(b)(viii), (b)(ix)(1) to contend:

That it is obvious from the perusal of the above paragraphs and the attached and collectively marked Annexures to this Complaint that the Complainant owns various trademark registrations for: PAPA GINO’S - PAPA GINO’S PIZZERIA and - These registrations constitute prima facie evidence of the validity of the mark. Thus, the Complainant has satisfied its burden of showing that it has rights in these trademarks.

That it is an ironic fact that the domain name in question is being used by the Respondent despite the Complainant being the true and legitimate owner of the trademarks registered, the domain name reflects its trademarks. That the domain name of papaginos.pk is identical with and confusingly similar to the trademarks of the Complainant as the words in the Complainant’s trademarks – PAPA GINO’S - and its products have been incorporated in the given domain name, and that there is a clear likelihood of confusion among the general public. [See Viacom International Inc. v Emperor Sedusa WIPO Case

No. D2001-1438 where the domain names <mtvasia.net> was held to be confusingly similar to the complainant's trademark MTV; also see PepsiCo, Inc. v. Kieran McGarry WIPO Case No. D2005-0629 where the domain names <pepsiusa.com> was held to be confusingly similar to the complainant's trademark Pepsi; also see Wal-Mart Stores, Inc. v. Lars Stork WIPO Case No. D2000-0628 where the domain names <wal-mart-europe.com> was held to be confusingly similar to the complainant's trademark Wal-Mart]; also see WhatsApp Inc. v. Meraart DNDRC Case No. C2017-0001 where the domain name <whatsapp.pk> was held to be identical and confusingly similar to the complainant's trademark WHATSAPP.

Similarly, in Zameen Media (Private) Limited v Rashed Saeed Saif Aleter Aldhanhani, WIPO Case No. DAE2021-0002, the domain name <zameen.ae> was held to be confusingly similar to the complainants' trademark and domain name (ZAMEEN). It was further established that for the purposes of comparison the ccTLD ".ae" is to be disregarded and the term "zameen" is to be compared with the trademark of the complainant - "ZAMEEN".

Thus, the Complainant has satisfied its burden under paragraph 4(a) (i) of the Policy.

It is an established principle that the incorporation of a Complainant's trademark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name.

The Complainant has provided sufficient information, including annexing evidence of the same, that the Complainant has rights in the trademark "PAPA GINO'S" in Pakistan. The addition of the ccTLD ".pk" would also not prevent the finding of confusing similarity.

In the case of Age International, Inc. dba Blanton Distilling Company v. Michael Chan WIPO Case No. D2021-2617, it was seen that the disputed domain name incorporated Complainant's BLANTON'S Mark in its entirety, omitting the apostrophe before the letter "s", while adding the term "shop", which copied the exact term used at the end of Complainant's domain name <blantonsbourbonshop.com>, used to reach its Official Website.

Prior UDRP panels have found typographic differences, such as the inclusion or omission of hyphens and apostrophes, are inadequate to avoid a finding of confusing similarity. See, e.g., L'Oreal v. Tracey Johnson, WIPO Case No. D2008-1721. Based on the above, the Panel found that the added term "shop" and omitted apostrophe did not prevent a finding of confusing similarity between the disputed domain name and Complainant's BLANTON'S Mark.

The Respondent has not submitted any contention. In the absence of any valid explanation of how the DDN is not confusingly similar to the trademark of the Complainant, the Panel finds confusing similarity between the DDN and the Complainant's trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

"Proved based on all evidence presented" that "shall demonstrate" the Respondent's "rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii)."

Paragraph 4(a)(ii) states that:

"(i) 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; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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."

The Complainant has used PKNIC Policy, para. 4(a)(ii), Rules, para. 3(b)(ix)(2) to contend that:

That the Respondent has no legitimate interest in holding on to this domain name in any capacity whatsoever, more specifically there is no legitimate interest when the Respondent copies, imitates web site design, lay out, color schemes, trademarks and the purpose for the website. [See Diamond Mattress Company, Inc. v. Diamond Mattress WIPO Case No. D2010 1637 where it was held that the Respondent lacked legitimate interest, because it was not a distributor but was trying to use the domain to attract commercial offerings; also see Birkenstock Orthopädie GmbH & Co. KG v. JL Innoways Co. Ltd., Jihao Jiang WIPO Case No. D20121202 where it was held that the Respondent lacked legitimate interest, because it was not an authorized distributor even when it was trying to sell genuine goods].

Moreover, the UDRP panel in Google Inc. v. Shaheen Younas, WIPO Case No. D2012-1365, held that the Respondent had no rights or legitimate interests in respect of the domain name <youtubeurdu.com> because the panel found it inconceivable that the Respondent could not have been well aware of the Complainant's YouTube website. Similarly, in Comerica Bank v. Online Management / Registration Private, Domains By Proxy, LLC, WIPO Case No. D20141018, where it was held the Respondent lacked legitimate interest because the Complainant had not authorized Respondent to the use of its trademarks and because of the Complainant's extensive use of its COMERICA trademarks.

That it is clear that Respondent intends to illegally use Complainant's trademark rights and take illicit advantage of the goodwill associated with the mark PAPA GINO'S for its own commercial gain and thus Respondent's website papaginos.pk does not constitute a bona fide commercial venture and it attempts instead to unfairly target the Complainant's trademarks. That it is also obvious from the perusal of the above paragraphs that by registering the disputed domain name, the Respondent intends to take unfair advantage by causing confusion to general public, with respect to origin or purpose of the Complainant's trademarks.

That it is the settled UDRP jurisprudence that mere registration of a domain name is not sufficient to confer rights or legitimate interests. That it is also the settled UDRP jurisprudence that once the Complainant has put forth an initial showing that the respondent lacks rights or legitimate interests, the burden of proof shifts to the respondent to allege specific rights establishing its rights or legitimate interests, and in case of failure to do so, the complainant is deemed to have satisfied paragraph 4 (a) (ii) of the Policy.

The Respondent has failed to respond, and resultantly satisfy the Panel that the Respondent is commonly known by the name of "PAPA GINO'S" or has any legitimate interest in the DDN.

As has been previously adopted by the discussions and findings in WIPO authorities, it is for the Respondent to rebut the allegations put forth by the Complainant after the Complainant establishes a prima facie case about the lack of legitimate interest in a disputed domain name. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be extremely difficult, if not impossible, for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the DDN, the Respondent was obliged to respond and submit evidence with respect to the same.

The Complainant has indicated that it is in use of the name “PAPA GINO’S” and has registered trademarks, demonstrating a prima facie case of legitimate interest in the DDN. Based on the arguments intimated by Complainant, the Panel is of the view that there is no legitimate interest when the Respondent copies, imitates web site design, lay out, color schemes, trademarks and the purpose for the website. In the case of *Diamond Mattress Company, Inc. v. Diamond Mattress* WIPO Case No. D2010-1637, it was held that the Respondent lacked legitimate interest, because it was not a distributor but was trying to use the domain to attract commercial offerings; additionally, in the case of *Birkenstock Orthopädie GmbH & Co. KG v. JL Innoways Co. Ltd., Jihao Jiang* WIPO Case No. D20121202, it was held that the Respondent lacked legitimate interest, because it was not an authorized distributor even when it was trying to sell genuine goods. The information submitted by the Complainant suggests that the Respondent has copied the layout of the Respondent’s website, and that the Respondent lacked authorization to act as its distributor.

Moreover, the UDRP panel in *Google Inc. v. Shaheen Younas*, WIPO Case No. D2012-1365, held that the Respondent had no rights or legitimate interests in respect of the domain name <youtubeurdu.com> because the panel found it inconceivable that the Respondent could not have been well aware of the Complainant’s YouTube website. Similarly, in *Comerica Bank v. Online Management / Registration Private, Domains by Proxy, LLC*, WIPO Case No. D20141018, where it was held the Respondent lacked legitimate interest because the Complainant had not authorized Respondent to the use of its trademarks and because of the Complainant’s extensive use of its COMERICA trademarks. Based on the perusal of these cases, the Panel has found that it would be virtually impossible for the Respondent to have been unaware of the Complainant’s website.

-Lack of legitimate interest will also be found when the Respondent intends to illegally use Complainant’s trademark rights and take illicit advantage of the goodwill associated with the mark for its own commercial gain. The Panel thus finds that the DDN -does not constitute a bona fide commercial venture and it attempts instead to unfairly target or utilize the Complainant’s trademarks to benefit from the goodwill of the Complainant. It is also obvious from the perusal of the preceding arguments that by registering the DDN, the Respondent intends to take unfair advantage by causing confusion to general public, with respect to origin or purpose of the Complainant’s trademarks.

It is the settled UDRP jurisprudence that mere registration of a domain name is not sufficient to confer rights or legitimate interests.

It is also the settled UDRP jurisprudence that once the Complainant has put forth an initial showing that the respondent lacks rights or legitimate interests, the burden of proof shifts to the

respondent to allege specific rights establishing its rights or legitimate interests, and in case of failure to do so, the complainant is deemed to have satisfied paragraph 4 (a) (ii) of the Policy.

The Panel, perusing the facts contended by the Complainant, and based on the evidence provided by the same, is of the view that the Respondent has used similar color schemes in its website “papaginos.pk.” Based on successive arguments elucidated previously and in the absence of any information provided by the Respondent in support of his legitimate interest in the DDN, the Panel is of the view that the Respondent does not possess any legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has used (Policy, paras. 4(a)(iii), 4(b); Rules, para. 3(b)(ix)(3)) to make the following submission:

It is a well-established UDRP jurisprudence that passive holding / retaining registration of – papaginos.pk - even after receiving a ‘Cease & Desist’ letter from the Complainant requesting to cease & desist from using its trademarks means that respondent is maintaining such registration of given domain name in bad faith. It is imperative to note that Respondent, having prior knowledge of existence of Complainant’s website and its trademarks, intentionally sought registration of the disputed domain papaginos.pk . The disputed domain name reflects the registered trademarks of the Complainant which are used to promote its bona fide business

Bad faith on part of the Respondent is also established by the fact that the disputed Domain is intentionally being used in a manner designed to cause confusion between the Complainant’s genuine innovation of its trademarks and business and that of Respondent’s domain name for the purposes of attracting Internet traffic for commercial gain, hence constituting bad faith registration and use on part of the Respondent. The disputed domain name reflects the registered trademarks of the Complainant which are used to promote its bona fide business.

Furthermore, bad faith on part of the Respondent can be further highlighted in the light of Amegy Bank National Association v. Contact Privacy Inc. Customer 0136596179 / Banks Joseph, WIPO Case No. D2014-0983, where the panel held that the Respondent had used the disputed domain name in bad faith due to the similarity not only in the disputed trademarks, but also, due to the similarity in the services offered by the Respondent with those of the Complainant, as was also seen in Happy Pancake AB v. Registration Private, Domains by Proxy, LLC / Fredrik Johansson, WIPO Case No. D2014-0870, where the

Panel found the Respondent to have registered and used the disputed domain name <gladapannkakan.com> in bad faith; and also in Amazon Technologies, Inc. v. Amazonprime.pk DNDRC Case No. C2019006 where the Panel found that it was unlikely that the Respondent was unaware about the Complainant's mark AMAZON and PRIME at the time of registration and use of the disputed domain name <Amazonprime.pk> especially given that the Respondent used the domain name for similar and related services as that of the Complainant.

Likewise, the panel in Facebook Inc. and Instagram, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Mihael Megatron, WIPO Case No. D2019-0797, held that the Respondent had obtained registration of the disputed domain names in bad faith because his Trademarks distinctively identify the Complainants' respective Trademarks so that the choice of the Disputed Domain Names which are clearly intended to replicate the Trademarks cannot be reasonably explained otherwise than as a reference to the Trademarks respectively owned by the Complainants.

The Respondent has failed to submit a response.

The Complainant and its trademark "PAPA GINO'S" have been well-known and the Respondent may have known about them when registering the DDN. The Complainant has submitted that the DDN is being used in bad faith. On the other hand, the Respondent has failed to provide any information to rebut the contention of the Complainant.

As stated in the complaint, it appears that Papa Gino's (founded in 1961), is a renowned American restaurant chain which owns, operates, and franchises one of the fastest growing and highly rated pizza restaurant chain in the United States and internationally, providing restaurant services, mainly but not limited to authentic Italian pizzas.

The complaint further states that through its operations under the brand name Papa Gino's, recorded sales revenue figures of over USD \$90,000,000 (ninety million dollars) in calendar year 2019, which highlights the popularity of the Complainant's goods and services offered under the Complainant's – PAPA GINO'S and PAPA GINO'S PIZZERIA - marks and logos among the public and consumers.

The Panel finds that the PAPA GINO'S mark of the Complainant had considerable popularity and was well-known for the period that the Respondent has been using the mark.

The screenshots provided by the Complainant suggest that the Respondent is using the DDN to provide similar services to those offered by the Complainant. The precedents submitted by the Complainant support how this is an indication of bad faith registration and use.

The Respondent did not provide any submission that it was not aware about the Complainant or its business at the time of registration of the DDN. The Panel, therefore, in the absence of any submission to the contrary by the Respondent, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the PAPA GINO'S mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the DDN.

Taking all the discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the DDN is contrary to the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDN.
3. The DDN is identical to the Complainant's trademark/names and registered domain names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <papaginos.pk> to the Complainant, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will be uploaded, www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Sunain Qazi

Sole Panelist

Date: 24 February 2023