

## ADMINISTRATIVE PANEL DECISION

Ferring B.V. v. Privacy Department, IceNetworks Ltd.  
Case No. D2022-4413

### 1. The Parties

The Complainant is Ferring B.V., Netherlands, represented by Jacobacci Avocats, France.

The Respondent is Privacy Department, IceNetworks Ltd., Iceland.

### 2. The Domain Name and Registrar

The disputed domain name <ferringbv.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 2022, 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 (Domain Admin, Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 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 November 25, 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 November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on December 22, 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 part of the Ferring Group, based in Hoofddorp, Netherlands, which is a biochemical group focusing on a number of specialized areas, including women's health and reproductive medicine. The Complainant was founded over 70 years ago and its products are now marketed in 110 countries. Its global turnover in 2021 was in excess of EUR 2 billion.

The Complainant's principal brand is FERRING and it owns trade mark registrations in multiple countries for this mark, including, by way of example, European Union Trade Mark, registration number 004030193, registered on September 11, 2006 in classes 5 and 10. The Complainant also owns and operates a large portfolio of domain names which comprise or include its FERRING mark including <ferring.com> and <ferring.nl>.

The disputed domain name was registered on August 13, 2022. The Panel has been prevented from establishing the use which is presently being made of the disputed domain name because attempts to access the Respondent's website generate a warning notice stating that it is a deceptive website that might trick the user into doing something dangerous such as installing malware<sup>1</sup>. However, the Complainant has provided screenshots of the Respondent's website showing that it has been used to promote services seemingly enabling Internet users to invest in Bitcoin. The Respondent's website is branded as "FERRINGBV" and its home page prominently features the claim "SECURE AND EASY WAY TO BITCOIN". The Complainant has additionally provided screenshots of a number of third party websites which, save for the name of the entity ostensibly providing the services promoted, are almost identical in form and content to that of the Respondent.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights in that it contains the entirety of the Complainant's FERRING mark followed by the letters "bv", which will be perceived as the acronym associated with a popular form of a Netherlands corporate entity, namely a "Besloten Vennootschap", this being the legal form of the Complainant. Accordingly, these additional letters do not diminish the confusing similarity between the disputed domain name and the Complainant's trade marks.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized any third party to register the disputed domain name nor to use its FERRING mark as part of a domain name. The form of the disputed domain name is such that it carries with it a high risk of affiliation with the Complainant and, in these circumstances, it is not possible for the Respondent to use it in connection with a *bona fide* offering of goods and services. Furthermore, the Respondent's website is likely to be a scam as it does not display any terms of use, information on payment methods or other information which would typically be provided on a genuine website. Additionally, the Complainant has located a number of identical websites which have been constructed using the same template and which have been reported as scams on third party websites.

There is no evidence that the Respondent is commonly known by the disputed domain name and, in addition, the address given by the Respondent for its location in Denmark is demonstrably false.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant's FERRING trade mark has a strong presence worldwide and the Respondent must have

---

<sup>1</sup> As outlined at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly attempted to visit the Respondent's website and has encountered the warning notice described above.

been aware of the Complainant and its mark when registering the disputed domain name. The mere registration of a domain name that is identical or confusingly similar to a famous or widely known trade mark by an unaffiliated entity can create a presumption of bad faith. The Respondent is likely to be using the disputed domain name for a scam. Moreover, the email servers associated with the disputed domain name are activated and the Complainant fears that the disputed domain name will be used in order to impersonate it for scam purposes.

## **B. Respondent**

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

## **6. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

### **A. Identical or Confusingly Similar**

The Complainant has provided details of the registered trade marks it owns for FERRING, an example of one of these marks having been provided above, and has thereby established its rights in this term. As a technical requirement of registration, the generic Top-Level Domain, that is ".com" in the case of the disputed domain name, is disregarded when assessing confusing similarity. The disputed domain name contains the entirety of the Complainant's FERRING mark together with the additional component "bv". This added element does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of [WIPO Overview 3.0](#); "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

The Complainant's FERRING trade mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate non-commercial or fair use of the domain name.

The disputed domain name comprises the Complainant's FERRING trade mark followed by the letters "bv" which Internet users familiar with the Complainant's brand will perceive as denoting its corporate status as a Netherlands-based besloten vennootschap company. The component parts of the disputed domain name are therefore, in combination, closely connected with the Complainant and, as a consequence, it is difficult to conceive of any plausible use of the disputed domain name by the Respondent that would be legitimate.

Even if the Respondent's website was actually engaged in the promotion and sale of Bitcoin, its website would not comprise a *bona fide* offering of goods and services as it is using the repute of the Complainant's mark, as it appears within the disputed domain name, in order to attract visitors. In fact, the Complainant has produced evidence of other websites which have been constructed, using the same template and featuring almost the same content, which, suggests that the Respondent's website is a sham and/or is being used for dishonest purposes. A sham website will not serve to provide a respondent with rights or a legitimate interest in a domain name; see *Macmillan Publishers International Limited v. DOMAIN ADMIN, DOMAIN PRIVACY SERVICE FBO REGISTRANT / Bushra Shoaib*, WIPO Case No. [D2022-1825](#).

The fact that attempts to access the Respondent's website now generate a warning that it is likely to be being used for deceptive purposes affirms its lack of *bona fide* use. As section 2.13.1 of the [WIPO Overview 3.0](#) explains; "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". In finding that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services, the Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant's assertion that it is using, or intending to use, the disputed domain name for dishonest purposes.

The Respondent's name, as disclosed by the Registrar, does not correspond with the trading style, "FERRINGBV", on its website. There is accordingly no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; the Respondent's website is commercial in character and the composition of the disputed domain name is such that it carries a significant risk of implied affiliation with the Complainant, which prevents its use by the Respondent from being considered fair.

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

### **C. Registered and Used in Bad Faith**

Having regard to the fact that the disputed domain name incorporates the Complainant's FERRING mark in full together with the letters "bv", which denote the nature of its corporate entity in the Netherlands, it is reasonable to infer that the Respondent was aware of the Complainant as at the date of registration and that the disputed domain name was registered because of its propensity to mislead Internet users into believing that any website to which it resolved was likely to be associated with the Complainant. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration, in circumstances where the domain name is put to a misleading use, amounts to bad faith; see, for example, *VKR Holding A/S v. Li Pinglong*, WIPO Case No. [D2016-2269](#). Similarly, as explained at section 3.1.4 of the [WIPO Overview 3.0](#): "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". The Panel accordingly finds that disputed domain name was registered in bad faith.

The only known use to which the disputed domain name has been put is to host a website seemingly promoting investments in Bitcoin. Internet users aware of the Complainant's FERRING brand who visit the Respondent's website having assumed, from the confusing similarity between the disputed domain name and the Complainant's mark, that it had some connection with the Complainant, are soon likely to realize their mistake. However, the Respondent will by then have had the opportunity to seek to derive financial benefit from their visit. In this respect see, for example, *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#), in which the panel explained, in the context of websites featuring pay-per-click links that "[...] the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely pay-per-click or referral

revenue achieved through the visitors to the site clicking on the sponsored advertising links. Even if visitors arriving at the websites to which the disputed domain name[s] resolve become aware that these websites are not such of the Complainant, the operators of these websites will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links”.

The same underlying principle is applicable to the Respondent’s website in that, irrespective of the content of the website to which the disputed domain name resolves, it is the confusing similarity between the disputed domain name and the Complainant’s mark which will have attracted Internet users to its website. Such conduct falls within the circumstance of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website.

The fact that near-identical copies of the Respondent’s website have been reported on third party websites as scams and that attempts to access the Respondent’s website now generate a deceptive website warning affirms the likelihood that the Respondent has used, or is using, the disputed domain name in order to engage in dishonest activity and thereby affirms its bad faith use. See, for example, *SODEXO v. Peter C Foy*, “Sodexo”, WIPO Case No. [D2022-3643](#) and section 3.1.4 of the [WIPO Overview 3.0](#); “[G]iven that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith”.

For these reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith. It is not therefore necessary to consider the Complainant’s additional submissions.

## 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 <ferringbv.com> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: January 5, 2023