

ADMINISTRATIVE PANEL DECISION

Sopariwala Exports v. Kunal S

Case No. D2023-0126

1. The Parties

The Complainant is Sopariwala Exports, India, represented by Anand & Anand, India.

The Respondent is Kunal S, India.

2. The Domain Name and Registrar

The disputed domain name <ariffazlani.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2023, 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 (DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2023 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 January 19, 2023.

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 January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2023.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on February 17, 2023. 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 manufacturer and exporter of tobacco and related products from India. The Complainant uses FAZLANI as a trademark, and "Fazlani" is the family name of the partners of the Complainant. The Complainant owns Indian trademark registrations for the FAZLANI word mark in all 34 international classes of goods. The word mark FAZLANI is registered under class 1, having registration number 1181747 with application date March 10, 2003, and the word mark FAZLANI is registered under class 2, registration number 1181748 with application date March 10, 2003.

The disputed domain name was registered on April 16, 2021. The disputed domain name is currently not being used by the Respondent, but it is put up for sale on the "www.afternic.com" website.

5. Parties' Contentions

A. Complainant

The Complainant states it is a partnership firm that was registered in 1977 and it conducts its business worldwide including India, Asia, Europe, West Asia, and Americas. The Complainant states that it is part of the Fazlani Group of Companies which has diverse business activities in the area of tobacco, agricultural commodities, ready to eat food products, perfumery products, education, flower export and real estate. The Complainant states that its group companies adopted the family name "Fazlani" commercially in 2003.

The Complainant states that apart from being a leading manufacturer and exporter of tobacco products from India, it is also an exporter of raw unmanufactured leaf tobacco to 75 countries across the world. The Complainant states that it maintains good quality control and has an inter-connected network of over 5,000 farmers, with a workforce of about 2,000 employees. The Complainant alleges the Government of India has recognized it as a "Star Export House", for its export performance. The Complainant alleges that it has received a certificate of excellence for the second-best export performance in unmanufactured tobacco for several years and in 2001 received the National Award for Excellence in Export. The Complainant adds it has been awarded "Golden Status" in recognition of its outstanding growth and financial contribution to the nation's export revenue.

The Complainant contends that its trademark is distinctive and is well-known due to extensive use. The Complainant states that besides the use of its family name as a trademark, the name is also part of the corporate name and trading style of its group companies such as: Fazlani Enterprises Pvt. Ltd., Fazlani Exports Pvt. Ltd., Fazlani Foundation, Fazlani Natures' Nest LLP, and Fazlani Realtors LLP.

The Complainant states that the disputed domain name incorporates the trademark FAZLANI and reflects the name of its partner, Mr. Arif Fazlani. The Complainant states that Mr. Arif Fazlani is a known business person who developed the brand ARABIAN NIGHTS in connection with intricately designed hookahs, shishas and hookah accessories, and also developed and launched perfumes and deodorants under the brand name LYLA BLANC. The Complainant states that Mr. Arif Fazlani is involved in philanthropic activity through the Fazlani Foundation that engages in various social activities such as providing employment oriented vocational training, educational scholarships, medical aid through mobile medical vans and telemedicine facilities, financial aid to poor and needy, destitute people, widows, orphanages, renovation of dilapidated schools and hospital buildings, providing drinking water facilities in drought affected areas.

The Complainant requests for the transfer of the disputed domain name on the grounds that it is confusingly similar to a trademark in which it has rights, the Respondent lacks rights or legitimate interests in the disputed domain name and the disputed domain name has been registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

The Complainant in these proceedings has to establish three elements under paragraph 4 (a) of the Policy to obtain transfer of the disputed domain name, these are:

- (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 lacks rights or legitimate interests in the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith by the Respondent.

A. Identical or Confusingly Similar

The first element under paragraph 4(a) of the Policy requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has provided credible evidence of its trademark registrations that establishes its rights in the FAZLANI mark. The disputed domain name reproduces the entire mark and reflects a personal name Arif Fazlani, which is the name of a partner in the Complainant firm. The Complainant has submitted evidence that Arif Fazlani is a known figure and his name is associated with the mark.

The question of rights in a personal name has been explored in several previous UDRP disputes. One significant point that emerges from the discussions in the previous cases, is that the mere reputation of a person or any personal rights in a name is generally considered insufficient to establish rights as understood under the Policy, unless there is evidence that the personal name is used as a source identifier. For an extensive discussion on this topic, see *Mr. Sidhartha Mallya v. Mr. Puneet Agarwal*, WIPO Case No. [D2014-1262](#).

The observation made in *Grupo Vicini, Ltd., Mr. Juan Bautista Vicini Cabral, and Mr. Juan Bautista Vicini Llubes v. Angel Ortiz*, WIPO Case No. [D2011-0561](#) is of relevance here, where it was observed by the learned panel that:

“where a name (either full name or just a surname) is not registered as a trademark or service mark, this Panel considers it is not enough to merely rely on the national or international recognition or prestige of the individual or family carrying such name, or the business success or other type of fame of an individual or family: it is necessary that such a name be used as a mark, and of course, that such fact be sufficiently proved.”

Turning to the facts and evidence in the present case, the Panel finds that the evidence submitted by the Complainant does not establish that the name Arif Fazlani has been used as a trademark or as an identifier of source of goods and services in commerce. However, the family name “Fazlani” is found to have been used as a trademark in which the Complainant has established rights. In the present case, the Complaint has been filed by the owner of the trademark and not by the individual, and the Complainant has based the Complaint on the confusingly similar of the disputed domain name to the FAZLANI mark.

The Panel accordingly finds there is confusing similarity between the disputed domain name and the mark.

The Complainant has fulfilled the requirements under the first element of the Policy.

B. Rights or Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to demonstrate that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant makes a *prima facie* case that the Respondent lacks rights or legitimate interests, the Respondent can rebut the Complainant's allegations with relevant submissions and supporting evidence to establish rights or legitimate interest in the disputed domain name. See Section 2.1 WIPO Overview of WIPO Panel. Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)).

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not responded to the Complaint, and the contentions made by the Complainant remain unrebutted.

The registration record shows the Respondent's name is Kunal S, which is not similar to the disputed domain name. Furthermore, there is nothing on record that the Respondent has made any demonstrable preparations to use the disputed domain name with a *bona fide* offering of goods and services, and it appears that the Respondent has held the disputed domain name passively since it was registered.

The Panel accepts that the Complainant has not authorized the Respondent to use the mark, and there is no relationship between the parties. The fact that the Respondent has not used the disputed domain name but has offered it for sale on the "www.afternic.com" website, is itself an indication that the Respondent does not have any use for the disputed domain name, except to sell it. The entire set of facts and circumstances, such as the lack of use of the disputed domain name and attempting to sell it, are all considered typical of cybersquatting, and these circumstances are not indicative of any rights or interests in favor of the Respondent.

The Complainant has established the second element under paragraph 4 (a) of the Policy, that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The third element requires the Complainant to establish the disputed domain name has been registered and is being used in bad faith by the Respondent.

The Complainant has submitted evidence that the Respondent has put up the disputed domain name for sale on the "www.afternic.com" website at a price of INR 702479 or USD 19,888. Evidence of offers to sell the disputed domain name, under the discussed circumstances, is generally considered as bad faith. The Panel finds based on the evidence, that the disputed domain name was primarily registered with an intention to create an impression of association with the Complainant's mark, and to sell it for valuable consideration in excess of the Respondent's documented out of pocket costs directly related to the domain name.

Given the reputation associated with the Complainant's mark, the passive holding of the disputed domain name, and the evidence that shows that the Respondent is looking to sell the disputed domain name for an amount that far exceeds the direct out-of-pocket costs related to the disputed domain name, it is clear that the Respondent has intentionally registered the disputed domain name to create confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement and seeks to derive unfair advantage from the Complainant's mark.

Taking into account all the facts and circumstances and the evidence on record, all collectively indicate that the disputed domain name was registered in bad faith and is being used to target the FAZLANI mark. The intention to transfer the disputed domain name in order to derive valuable consideration, under the discussed circumstances, is found to be bad faith use of the disputed domain name.

The Panel finds that the Complainant satisfied the requirements under paragraph 4 (a) (iii) of the Policy, that the disputed domain name has been registered and is being used in bad faith by the Respondent.

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 <ariffazlani.com> be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: March 3, 2023