

ADMINISTRATIVE PANEL DECISION

Fiiitjee Limited v. shunsuke kadota, webcircle inc.
Case No. D2023-1351

1. The Parties

The Complainant is Fiiitjee Limited, India, represented by Lexport, India.

The Respondent is shunsuke kadota, webcircle inc., Japan.

2. The Domain Name and Registrar

The disputed domain name <fiiitjeefranchise.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 29, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 (Whois Privacy Protection Service By Value-Domain) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 31, 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 amendment to the Complaint in English on April 1, 2023.

On March 31, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On April 3, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 in English and Japanese of the Complaint, and the proceedings commenced on April 6, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 27, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on May 11, 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 was established in 1992 and is a company in the business of providing supplementary education programs in India and Asia.

The Complainant owns several domain names including the mark FIITJEE. The Complainant is also the owner of several trade mark registrations for FIITJEE in India, including the following:

Trade Mark	Registration Number	Registration Date	Classes
	1100308	April 29, 2002	16
	1100309	April 29, 2002	16
	1100310	April 29, 2002	16
	1100311	April 29, 2002	16
	1109049	June 4, 2002	16
	1310461	September 22, 2004	41
	2306069	March 27, 2012	41
	2306070	March 27, 2012	41
FIITJEE	2452861	January 1, 2013	16
FIITJEE	2452862	January 1, 2013	41
	3792236	March 29, 2018	16
	3792238	March 29, 2018	41

The disputed domain name <fiitjeefranchise.com> was registered by the Respondent on July 29, 2014. The disputed domain name was registered in the name of the Complainant from 2001 to 2013. In 2014, the Respondent was able to register the disputed domain name as a result of it lapsing when the Complainant failed to renew it.

At the date of this Complaint, the disputed domain name resolved to a website with the name “school/learning-related website” in Japanese. At the date of this decision, the disputed domain name resolves to a blank webpage with only the words “Under maintenance...” in Japanese.

5. Parties’ Contentions

A. Complainant

The Complainant contends that:

- (a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name wholly incorporates the Complainant’s well known FIITJEE trade mark. The generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name does not eliminate the overall notion that the designations are connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorisation or license to use the Complainant’s trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name; and
- (c) The disputed domain name was registered and is being used in bad faith. The mere fact that the Respondent registered the disputed domain name right when the Complainant’s ownership lapsed gives rise to an inference of bad faith. Based on the use of the disputed domain name, the Respondent registered and is using the disputed domain name to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant’s trade mark.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue – Language of the Proceeding

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the language of the Registration Agreement for the disputed domain name is in Japanese. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- a) the Complainant is a corporate entity incorporated in India, where Japanese is not an official language;
- b) English is the primary language of business; and
- c) in order to proceed in Japanese, the Complainant would have had to retain specialised translation services that would cause an unnecessary burden to the Complainant and delay the proceeding.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Japanese;
- the Respondent has not commented on the language of the proceeding;
- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights to;
- (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 Panel finds that the disputed domain name <fitjeefranchise.com> is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the FIITJEE trade mark in full followed by the word "franchise" and the gTLD ".com". The gTLD is generally disregarded when considering the first element. (See Section 11.1, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"))

The Panel notes that the Complainant did not rely on any registered trade marks in Japan where the Respondent is located. The ownership of a trade mark is generally considered to be a threshold standing issue. The location of the trade mark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trade mark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name. Section 2.1 of the [WIPO Overview 3.0](#) provides:

“While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name 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. As such, where a 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 name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the FIITJEE trade mark and the use of the Complainant’s FIITJEE trade mark cannot be a coincidence. The FIITJEE trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for over 30 years. In addition, the disputed domain name was registered by the Respondent after the Complainant allowed it to lapse. The Panel is satisfied that the Respondent was aware of the Complainant and its FIITJEE trade mark when he or she registered the disputed domain name.

The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs Internet users to a parked webpage showing “school/learning-related website” in Japanese. This is closely related to the Complainant’s main business of providing education related services.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) of the Policy.

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, <fiitjeefranchise.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: May 25, 2023