

ADMINISTRATIVE PANEL DECISION

First Keystone Community Bank v. Host Master, Transure Enterprise Ltd Case No. D2023-2048

1. The Parties

Complainant is First Keystone Community Bank, United States of America (“United States”), represented by ZeroFox, United States.

Respondent is Host Master, Transure Enterprise Ltd, United States.

2. The Domain Name and Registrar

The disputed domain name <secure-fkcbank.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 8, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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 (above_privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on May 19, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on May 24, 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 Respondent of the Complaint, and the proceedings commenced on May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on June 19, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on June 27, 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

Complainant is a regional bank serving the Northeastern United States. Established in 1864, it has been known as “FKC Bank” since a merger with another bank 15 years ago. The bank’s parent company is publicly traded under the symbol FKYS and averages USD 10 million in quarterly revenue, serving tens of thousands of private customers and local businesses.

The disputed domain name was registered on February 5, 2023. It resolves to a website featuring pay-per-click (“PPC”) links related to banking services.

5. Parties’ Contentions

A. Complainant

Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that the FKC BANK brand is unique in the industry and is associated only with Complainant, which has actively advertised and promoted this mark for 15 years. The disputed domain name wholly incorporates the mark FKC BANK preceded by “secure-”, which does not distinguish it from the trademark. Complainant had previously registered the subdomain <secure.fkcbank.com> and used it for secure logins, as is customary in the banking industry.

Under the second element, Complainant states that Respondent has made no attempt to use the domain in question for a *bona fide* offering of goods or services. Rather, the disputed domain name is parked and hosts ads for banking services that compete with Complainant. It is highly unlikely that Respondent is commonly known by the disputed domain name. The disputed domain name is not being used for fair use as it is simply being parked and hosting ads. The addition of the element “secure” to Complainant’s known mark also strongly communicates an association with Complainant that does not exist.

Under the third element, Complainant states that the disputed domain name is being held passively in bad faith to disrupt the business of Complainant. It is being parked to host ads. Due to the active MX record, Respondent is able to use the disputed domain name for email, which could easily be misused to impersonate Complainant for phishing purposes. The close identity with Complainant’s previous subdomain at <secure.fkcbank.com> indicates that Respondent was aware of Complainant and registered the disputed domain name in an attempt to confuse customers. Respondent has had over 200 UDRP complaints filed against it, resulting in the transfer or cancellation of over 200 domain names. This demonstrates a pattern of conduct and awareness of Complainant’s mark.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

As a threshold matter, the Panel must decide whether Complainant has standing to bring a UDRP action based on unregistered trademark rights.

Based on the evidence available, the Panel finds that Complainant has established its unregistered rights in the FKC BANK mark. There is sufficient evidence to establish that the FKC BANK mark has, through use, become a distinctive identifier, which consumers associate with Complainant’s goods and services. The mark does not consist solely of descriptive terms. The Panel established that Complainant operates its primary business website at the domain name <fkc.bank>. Such use predates the registration of the disputed domain name and supports Complainant’s assertion of acquired distinctiveness of an unregistered mark. See, for example, *UITGERVERIJ CRUX v. W. FREDERIC ISLER*, WIPO Case No. [D2000-0575](#). See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.3.

Consistent with prior UDRP panel practice, the Panel finds that Respondent has deliberately targeted Complainant’s mark, and this fact supports a finding that Complainant’s mark has achieved significance as a source identifier for purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

In comparing Complainant’s FKC BANK with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark as the dominant part of the mark (“fkc bank”) is clearly recognizable within the disputed domain name, preceded by the term “secure” and a hyphen. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, 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. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent’s 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) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is 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 Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the FKC BANK mark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

There is no evidence that Respondent is commonly known by the disputed domain name. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services, or of demonstrable preparations to use the disputed domain name in connection with such an offering. See [WIPO Overview 3.0](#), section 2.2.

The Panel finds that the use of a disputed domain name (reflecting Complainant's mark together with a term customarily used in the banking industry for secure login sites) to resolve to a PPC website such as the one used by Respondent does not represent a *bona fide* offering as at least one of the links competes with or capitalizes on the reputation and goodwill of Complainant's mark. See [WIPO Overview 3.0](#), section 2.9. See also *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#).

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. At the time of registration of the disputed domain name, Complainant has been known as "FKC Bank" for over 15 years. The disputed domain name incorporates Complainant's mark and is nearly identical to Complainant's previous subdomain at <secure.fkcbank.com>. Accordingly, it is clear that Respondent had Complainant's mark in mind when registering the disputed domain name.

The Panel finds the evidence in the record establishes that Respondent used the disputed domain name to resolve to a website featuring PPC links, including those related to Complainant's business. Absent any evidence of mitigating factors such as efforts by Respondent to avoid links that target Complainant's mark, such use is clearly evidence of bad-faith use of the disputed domain name. See [WIPO Overview 3.0](#), section, 3.5.

The Panel further notes that a search of previous UDRP decisions reveals that Respondent had indeed been subject to a significant number of unfavorable decisions, indicating that Respondent has engaged in a pattern of such abusive conduct. See [WIPO Overview 3.0](#), section 3.1.2.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and, under the circumstances, the Panel does not find any such use plausible.

The Panel finds that Complainant has established 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, <secure-fkcbank.com>, be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: July 11, 2023