

ADMINISTRATIVE PANEL DECISION

F5, Inc., f/k/a F5 Networks, Inc. (F5 有限公司, 曾用名 F5 网络公司) v. 北京外思特科技有限公司 (bei jing wai si te ke ji you xian gong si)
Case No. D2022-3178

1. The Parties

The Complainant is F5, Inc., f/k/a F5 Networks, Inc. (F5 有限公司, 曾用名 F5 网络公司), United States of America (“United States”), represented by Azora Law, United States.

The Respondent is 北京外思特科技有限公司 (bei jing wai si te ke ji you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <f5hardware.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 27, 2022. On August 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 31, 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 amendment to the Complaint in English on September 1, 2022.

On August 31, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 2, 2022, the Complainant submitted its Chinese translation of the Complaint. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint in Chinese and English 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 Chinese of the Complaint, and the proceeding commenced on September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 27, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on October 7, 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

A. Complainant

The Complainant is a company incorporated in the State of Washington in the United States and a provider of technology related security services to customers worldwide under the trade mark F5 (the "Trade Mark").

The Complainant is the owner of registrations in jurisdictions worldwide for the word and device versions of the Trade Mark, including United States registration No. 2,094,918, registered on September 9, 1997; and United States registration No. 2,427,084, registered on February 6, 2001.

B. Respondent

The Respondent is apparently a company located in Beijing, China.

C. The Disputed Domain Name

The disputed domain name was registered on March 8, 2018.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language "phishing" website, which impersonates an official or authorised website of the Complainant, features prominently the logo version of the Trade Mark and the address of the Complainant's office in Hong Kong, China, and invites Internet users to submit personal information by signing in or signing up for product information and product quotes, and making employment applications (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, and, upon receiving notice from the Center of the language of the Registration Agreement, provided a translation of the Complaint into Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel notes that the disputed domain name incorporates an English word "hardware", and resolves to a website in English. Moreover, although the Complainant translated its Complaint into Chinese, the Respondent did not file a response and did not object that English be the language of the proceeding. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding. The Panel therefore determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7), followed by the word "hardware".

Where a relevant trade mark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, in order to fraudulently elicit the Complainant's customers and other Internet users to provide their personal information and contact details.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the manner of use of the disputed domain name highlighted in section 6.2.B. above, the Panel concludes that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(b)(iv) 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 <f5hardware.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/
Sebastian M.W. Hughes
Sole Panelist
Dated: October 21, 2022