

## **ADMINISTRATIVE PANEL DECISION**

Tomer Federman d/b/a Federman Capital v. Dmitry Chervonyi  
Case No. D2022-3916

### **1. The Parties**

The Complainant is Tomer Federman d/b/a Federman Capital, Israel, represented by Greenberg Traurig LLP, United States of America (“United States”).

The Respondent is Dmitry Chervonyi, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <federman.capital> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2022. On October 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 Administrator, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 on October 21, 2022.

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 of the Complaint, and the proceedings commenced on November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022. On November 15, 2022, the Center received an email from the Respondent disclaiming any relationship with the disputed domain name. The Respondent did not submit a formal response. Accordingly, the Center notified the Parties on November 25, 2022 that the Center would proceed with the panel appointment process.

The Center appointed Edoardo Fano as the sole panelist in this matter on December 5, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules, and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Tomer Federman d/b/a Federman Capital. Tomer Federman is the founder of Federman Capital, an unincorporated sole proprietorship located in Israel and operating in the financial field. The Complainant has provided evidence in support of unregistered trademark rights in the personal surname of its founder FEDERMAN as well as in the business name FEDERMAN CAPITAL as distinctive identifiers of the Complainant's financial services as early as June 2018.

The Complainant originally registered the disputed domain name on June 7, 2018, and inadvertently allowed it to expire on June 7, 2021. The Complainant provided evidence in support of this.

According to the WhoIs records, the disputed domain name was registered on February 8, 2022, and when the Complaint was filed, it redirected to a website in which the Complainant's unregistered trademarks as well as the Complainant's original website content and trade dress were reproduced.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is identical to its unregistered trademarks FEDERMAN and FEDERMAN CAPITAL.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its unregistered trademarks within the disputed domain name. The Respondent is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The Respondent is using the disputed domain name to resolve to nearly identical website content published by the Complainant before the Complainant inadvertently allowed the disputed domain name to expire, blatantly attempting to impersonate the Complainant.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's unregistered trademarks are distinctive and known in the financial field. Therefore, the Respondent targeted the Complainant's unregistered trademarks at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name with the purpose of

attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's unregistered trademarks as to an affiliation between the Respondent and the Complainant, qualifies as bad faith registration and use.

## **B. Respondent**

The Respondent has made no formal reply to the Complainant's contentions.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL INTERNATIONAL PLC v. MARK FREEMAN*, WIPO Case No. [D2000-1080](#); *ALTAVISTA COMPANY v. GRANDTOTAL FINANCES LIMITED et. al.*, WIPO Case No. [D2000-0848](#); and *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

In this case, the Respondent submitted an informal email communication, stating the following:

"Thank you for the emails. We got the physical letter and after find your email in the spam folder. Can you elaborate on what is happening because we are not related to federman.capital domain. We are managing our domain through GoDaddy, not NameSilo, LLC. We don't want to have any conflict or be involved in such cases. Looking forward to hearing from you." (November 15, 2022).

The Panel notes that the Rules, paragraph 1, identify the Respondent as "the holder of a domain-name registration against which a complaint is initiated". While the Respondent disclaims any relationship with the disputed domain name, the Panel notes that the registrant identified by the Registrar was Dmitry Chervonyi and that the email address associated with the registration of disputed domain name was the same email address that submitted the Respondent's communication of November 15, 2022. Accordingly, on the evidence put forward in this dispute, the Panel is unable to confirm the Respondent's contentions and considers the Respondent for the purposes of this proceeding to be Dmitry Chervonyi, the registrant identified by the concerned Registrar. However, the Panel also notes that even if the Respondent's contentions were true they would not alter the outcome of this proceeding, but rather would be further evidence of bad faith.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 Complainant has provided evidence of unregistered trademark rights in the personal surname of its founder FEDERMAN, as well as in the business name FEDERMAN CAPITAL, for the purpose of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.3 and 1.5.

The Panel finds the disputed domain name is identical to the unregistered trademark FEDERMAN.

As regards the Complainant's unregistered trademark FEDERMAN CAPITAL, the Panel finds that the dispute domain name may be considered in its entirety for the purposes of assessing confusing similarity, since the present generic Top-Level Domain ("gTLD") and the second level portion of the disputed domain name in combination consist of the relevant trademark. See [WIPO Overview 3.0](#), section 1.11.3.

The Panel therefore finds that paragraph 4(a)(i) of the Policy has been satisfied.

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

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent's rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The disputed domain name redirected to nearly identical website content published by the Complainant before the Complainant inadvertently allowed the disputed domain name to expire, by means of which the Respondent was attempting to impersonate the Complainant.

According to the [WIPO Overview 3.0](#), section 2.13:

“2.13.1 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 [...]”

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

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

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) that [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] web site or location”.

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s unregistered trademarks FEDERMAN and FEDERMAN CAPITAL in the field of financial services is clearly established, and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name, especially because the disputed domain name resolved to a website in which the Complainant’s unregistered trademarks were reproduced and the same financial services as the Complainant were seemingly offered.

The Panel further notes that the disputed domain name was also being used in bad faith since the Respondent was trying to impersonate the Complainant, likely in connection to a phishing scheme, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant’s unregistered trademarks as to the disputed domain name’s source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant’s business.

The above suggests to the Panel that the Respondent intentionally registered and was using the disputed domain name in order both to disrupt the Complainant’s business, in accordance with paragraph 4(b)(iii) of the Policy, and to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Finally, the Panel considers that the nature of the disputed domain name, which is identical to the Complainant’s unregistered trademarks, further support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith, and the Respondent has provided no evidence to the contrary.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **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 <federman.capital> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: December 14, 2022