

ADMINISTRATIVE PANEL DECISION

Equifax Inc. v. louis Lebuis

Case No. D2023-2164

1. The Parties

Complainant is Equifax Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

Respondent is louis Lebuis, Canada.

2. The Domain Name and Registrar

The disputed domain name <equifac.net> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 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 (c/o WHOIStrustee.com Limited) and contact information in the Complaint. The Center sent an email communication to Complainant on May 22, 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 the same day.

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 Respondent of the Complaint, and the proceedings commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 14, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on June 15, 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 company organized under the laws of the United States that is a global provider of information solutions and human resources business process outsourcing services for businesses, governments and consumers.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its company name and brand EQUIFAX, including, but not limited, to the following:

- word mark EQUIFAX, United States Patent and Trademark Office (USPTO), registration number: 1027544, registration date: December 16, 1975, status: active;
- word mark EQUIFAX, USPTO, registration number: 1045574, registration date: August 3, 1976, status: active.

Moreover, Complainant has demonstrated to own since 1995 the domain name <equifax.com> which resolves to Complainant's main website at "www.equifax.com", promoting Complainant's products and related services worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Canada who registered the disputed domain name on July 7, 2022. By the time of the filing of the Complaint, the disputed domain name resolved – and still resolves by the time of the rendering of this decision – to a website at "www.equifac.net" to which access is technically denied.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that its roots date back to 1899, that it meanwhile operates in 24 countries with about 11,000 employees worldwide and that its EQUIFAX trademark has acquired notoriety and has become well known over the years.

Complainant submits that the disputed domain name is confusingly similar to its EQUIFAX trademark as it contains the latter in its entirety and in a misspelled version by simply substituting the letter "x" with the adjacent letter "c". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized Respondent to register or use its EQUIFAX trademark in any manner, (2) 14 security vendors (including Google and Sophos) have identified the disputed domain name as "malicious" (including by being used in connection with phishing activities), (3) Respondent failed to use the disputed domain name in connection with an active website, thus neither used it in connection with a *bona fide* offering of goods or services nor in a legitimate noncommercial or fair manner, and (4) to Complainant's knowledge, Respondent has never been commonly known by the disputed domain name and has never acquired any trademark rights therein. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's EQUIFAX trademark is so well known that it is implausible that Respondent was unaware thereof when it registered the disputed domain name, (2) 14 security vendors (including Google and Sophos) have identified the disputed domain name as "malicious" (including by being used in connection with phishing activities), (3) the fact that the disputed domain name is only passively held by Respondent is not against finding bad faith given that the EQUIFAX trademark is very

distinctive and has a strong reputation, and (4) Respondent has established MX records for the disputed domain name, which enables it to use the disputed domain name to send and receive emails.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- Before any notice to Respondent of the dispute, Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- Respondent is not 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 trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.\$
- The record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name.

Panels have 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. [WIPO Overview 3.0](#), section 2.13.1.

Complainant has demonstrated, *inter alia*, that 14 security vendors (including Google and Sophos) have identified the disputed domain name as "malicious" (including by being used in connection with phishing activities), a finding which is supported by the fact that Respondent apparently has established MX records for the disputed domain name, which enables it to use the disputed domain name to send and receive emails, possibly in connection with phishing activities.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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

The Panel considers that the record of this case reflects that:

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the

implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's EQUIFAX trademark, and the composition of the disputed domain name (which constitutes a typical typo-squatting containing the EQUIFAX trademark in its entirety and in a misspelled version by simply substituting the letter "x" with the adjacent letter "c"), and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Panels have 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) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel notes that 14 security vendors (including Google and Sophos) have identified the disputed domain name as "malicious" (including by being used in connection with phishing activities), a finding which is supported by the fact that Respondent apparently has established MX records for the disputed domain name, which enables it to use the disputed domain name to send and receive emails, possibly in connection with phishing activities. Therefore, the Panel holds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <equifac.net>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: June 29, 2023