

ADMINISTRATIVE PANEL DECISION

Fosroc International Limited v. abdul kareem
Case No. D2023-2398

1. The Parties

The Complainant is Fosroc International Limited, United Kingdom, represented by Barker Brettell LLP, United Kingdom.

The Respondent is abdul kareem, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <fosrroc.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2023. On June 2, 2023, the Center transmitted by email to the registrar a request for registrar verification in connection with The Domain name. On June 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (“The Registrant of the disputed domain name”) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 amended Complaint on June 13, 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 the Respondent of the Complaint, and the proceedings commenced on June 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 26, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on July 28, 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 is a British manufacturer of specialized construction chemicals. The Complainant owns worldwide portfolio of trademark registrations for the FOSROC mark, such as:

- The United Kingdom trademark registration no. 1474514 for the FOSROC mark, registered on January 16, 2015;
- The United Kingdom trademark registration no. 3068519 for the FOSROC mark (word and design), registered on September 30, 1994.

The Respondent registered the Domain Name on May 2, 2023. The Domain Name has been used in connection with a fraudulent email scheme. There is no evidence before the Panel to suggest that the Domain Name has ever directed to an active website.

5. Parties' Contentions

A. Complainant

The Complainant claims that the Domain Name is confusingly similar to its FOSROC trademark because there is one letter difference between the dominant element of the Domain Name and the Complainant's registered mark.

The Complainant claims that the Respondent has no right or legitimate interests in respect of the Domain Name because there is no evidence of the 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. The Complainant contends that the Respondent did not have a permission to register the Domain Name that was confusingly similar to the Complainant's mark. The Complainant argues that the Respondent had no other reason to register the Domain Name other than to attract, for commercial gain, Internet users to the Respondent's website by suggesting affiliation, or endorsement of the Respondent's services.

The Complainant claims that Domain Name was registered and is being used in bad faith because the Domain Name was used for email addresses to impersonate Complainant's employees. The Complainant claims that the emails were sent from an email address associated with the Domain Name, which closely resembled an email of one of the employees of the Complainant's subsidiary. The Complainant claims that the emails that included name and signature block of the employee, advised a Complainant's customer about new bank account details and directed the customer to direct payments to that account. The Complainant argues that by using the Domain Name and sending fraudulent emails impersonating genuine employees, the Respondent is intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark and is disrupting business of the Complainant.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The evidence on file shows that the Complainant owns trademark registrations for the FOSROC trademark and, as a result, has rights in the FOSROC trademark pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

The Panel finds that the Domain Name is confusingly similar to the Complainant’s FOSROC trademark. It is well established that “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”.¹ Here, the Domain Name consists of the typo variant of the FOSROC trademark, where the Complainant’s mark contains two letters “r” instead of one “r”, and the generic Top-Level Domain (“gTLD”) “.com”. Because the misspelled FOSROC trademark is sufficiently recognizable the Domain Name, and the gTLD “.com” would usually be disregarded under the confusing similarity test², as it is a technical requirement of registration, the Panel considers that the Domain Name is confusingly similar to the Complainant’s trademark.

Thus, the Panel finds that the first element of the UDRP has been met.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the UDRP, the Respondent may establish that it has rights or legitimate interests in the Domain Name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the 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) the Respondent has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) the 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 accepts that there is no evidence of the 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. Prior UDRP panels held that the use of a domain name for illegal activity, such as impersonation, can never confer rights or legitimate interests on a respondent.³ The evidence on record demonstrates the Respondent’s misuse of the Domain Name in its impersonation of an employee of a

¹ Section 1.9, [WIPO Overview 3.0](#).

² Section 1.11, [WIPO Overview 3.0](#).

³ Section 2.13.1, [WIPO Overview 3.0](#).

Complainant's subsidiary to divert payments from Complainant's customers to the Respondent's bank accounts.

In addition, the evidence shows that the Respondent is not commonly known by the Domain Name. Nor is the Respondent making a legitimate noncommercial or fair use of the Domain Name, because it defrauded Complainant's customers.

The Panel finds that the Complainant made out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent in the Domain Name. Once complainant makes a *prima facie* case, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name.⁴ The Respondent has failed to do so. Thus, the Panel finds that in this proceeding the Complainant has satisfied paragraph 4(a)(ii) of the UDRP.

C. Registered and Used in Bad Faith

Under the third UDRP element, the Complainant is required to prove that the Domain Name was registered and is being used in bad faith.

The evidence on record shows that third-party emails sums were sent from a "[...][@fosrroc.com](mailto:fosrroc.com)" email address requesting a Complainant's customer to direct payment for purchased goods to a different bank account. The email address was created using the Domain Name and was very similar to the real email address of one of the Complainant subsidiary's employee, "[...][@fosroc.com](mailto:fosroc.com)". The emails, that contained a copy of a signature line from the real Complainant subsidiary's employee, followed up on a correspondence between the employee and the customer with updated bank account instructions for the payment. As a result, the customer sent the payments to the bank account associated with the illegal emails.

Paragraph 4(b) of the UDRP sets forth circumstances, which shall be considered evidence of the registration and use of a domain name in bad faith. The examples of bad faith registration and use set forth in paragraph 4(b) of the UDRP are not meant to be exhaustive of all circumstances from which such bad faith may be found. Prior UDRP panels have held that "the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. [...] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers".⁵ The circumstances of this case are similar to such cases because the Respondent used the Domain Name to sent deceptive emails to direct payments intended for the Complainant to its bank account.

Therefore, the Panel finds that the third element of the UDRP has been met.

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 <fosrroc.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: August 10, 2023

⁴ Section 2.1, [WIPO Overview 3.0](#).

⁵ Section 3.4, [WIPO Overview 3.0](#).