

ADMINISTRATIVE PANEL DECISION

Alpha Group International v. Jack Francis Case No. D2023-2853

1. The Parties

The Complainant is Alpha Group International, United Kingdom, represented by ZeroFox, United States of America.

The Respondent is Jack Francis, China.

2. The Domain Name and Registrar

The disputed domain name <alphafxplc.com> is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 (DOMAIN PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 amendment to the Complaint on July 25, 2023.

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 July 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 25, 2023.

The Center appointed John Swinson as the sole panelist in this matter on September 7, 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.

The Panel issued a Procedural Order No. 1 on October 11, 2023, as discussed below, giving both parties the opportunity to respond, and extending the due date of the Decision to October 25, 2023. The Complainant responded to the Procedural Order on October 16, 2023. The Respondent did not respond to the Procedural Order.

4. Factual Background

The Complainant, who was previously known Alpha FX plc, is a foreign exchange market manager and service provider with headquarters in London, United Kingdom. The Complainant has clients in over 50 countries and has 8 offices around the world. The Complainant is authorized and regulated by the Financial Conduct Authority to provide regulated products and services (FCA Registration Number: 770377) and authorized by the Financial Conduct Authority as an Authorized Electronic Money Institution (Registration Number: 900849).

The Complainant asserts it has trademark registrations for ALPHA FX but does not provide them in the Complaint. The Complainant states that ALPHA FX is a globally recognized mark and is associated solely with Alpha Group International when related to market managing services. The Complainant states that this ALPHA FX has gained secondary meaning and is associated with the Complainant such that they have an internationally recognized common law trademark.

The Complainant's primary domain name <alphagroup.com> was used by the Complainant since 2010.

The disputed domain name was registered on March 10, 2023.

At one time the disputed domain name redirected to the Complainant's website. At the present time, the disputed domain name does not resolve to an active website.

The Respondent did not file a Response, so little information is known about the Respondent.

The disputed domain name has been used to send phishing emails, and in such context is being used to impersonate the Complainant.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the Complainant has tracked thousands of phishing emails to the Complainant's customers.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant.

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 the 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.

The Complainant is a publicly listed financial services company based in London, United Kingdom, and was represented in this dispute by an external party. The Complaint was sparse and included no evidence of any trademark registrations or of the Complainant's use or reputation in respect of any trademark.

The Complainant carries the burden of proof. An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any *bona fide* documentary or other credible evidence. *Professor Nelson Rose v. Domain Manager, Star Enterprises LTD S.A*, WIPO Case No. [D2021-2918](#); *Corrosion Technology International, LLC v. Anticorrosives Industriales Ltda. (ANCOR), Ancortecmin S.A., and CTI ANCOR*, WIPO Case No. [D2008-1965](#).

Because of allegations by the Complainant of phishing and financial fraud, the Panel took the step of issuing a Procedural Order to give the Complainant the opportunity to provide additional evidence of its reputation and of the use of the disputed domain name alleged in the Complaint.

In response to the Procedural Order, the Complainant stated that the Complainant, trading both under "Alpha Group" and "Alpha FX" brand names, trades over EUR 20 billion annually and that Alpha FX Ltd (as a wholly owned subsidiary of the Complainant) currently has around 250 employees. Moreover, the Complainant asserts that it has the following financial services licenses in various jurisdictions:

- Registered with FINTRAC in Canada (Registration number: M18265420);
- Registered with the Revenu Quebec as a money services business (Licence Number 12675);
- Licensed by the Australian Securities and Investment Commission (ASIC) AFS Licence number 541102; and
- A member of the Society for Worldwide Interbank Financial Telecommunication (SWIFT), BIC number [...].

The evidence provided by the Complainant to prove common law rights was not in all respects complete, but the Complainant provided evidence of a series of phishing emails. The fact that the Respondent is targeting

the Complainant's trademark supports the Complainant's assertion that its trademark has achieved significance as a source identifier. Based on the available record, on balance, the Panel finds the Complainant has established unregistered trademark or service mark rights in ALPHA FX for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "plc", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy (if anything, it affirms targeting of a source identifier). [WIPO Overview 3.0](#), section 1.8.

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 the 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 the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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. Similarly, a respondent's use of a complainant's mark to redirect users to the Complainant's own site would not support a claim to rights or legitimate interests.

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.

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.

UDRP panels have held that the use of a domain name for illegal activity (e.g., phishing) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. *Archer-Daniels-Midland Company v. Registration Private, Domains By Proxy, LLC / Chantelle Columbus*, WIPO Case No. [D2022-1656](#). As stated above, evidence of phishing was provided in the Complaint.

At present, the disputed domain name does not resolve to an active website. The Complainant provided circumstantial evidence that at one time the disputed domain name redirected to the Complainant's website. This is consistent with use of the disputed domain name for a phishing email scheme. If a recipient of the phishing email entered the disputed domain name into a browser, the recipient may have been tricked into believing it was owned by the Complainant. Thus, in the circumstances of this case, use of the disputed domain name to redirect to the Complainant's website is further evidence of bad faith use.

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 <alphafxplc.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: October 25, 2023