

ADMINISTRATIVE PANEL DECISION

Futureal Development Holding Ingatlanforgalmazó Ltd. v. Evans Haji Touma,
Moonstone Capital
Case No. DCO2023-0110

1. The Parties

The Complainant is Futureal Development Holding Ingatlanforgalmazó Ltd., Hungary, represented by CMS Cameron McKenna Nabarro Olswang LLP, Hungary.

The Respondent is Evans Haji Touma, Moonstone Capital, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <futurealgroup.co> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2023. On December 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2024, 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 January 22, 2024.

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 January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2024.

The Center appointed John Swinson as the sole panelist in this matter on February 20, 2024. 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 corporation duly registered under the laws of Hungary.

The Complainant owns Hungarian Trademark Registration No. 189983 for FUTUREAL with a filing date of February 20, 2006, with a registration date of June 22, 2007, as well as trademark registrations in other countries.

A subsidiary of the Complainant operates the website located at "www.futurealgroup.com". This website states that the Futureal Group is internationally recognized for its office, industrial, commercial, and residential real estate developments and investments.

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

The disputed domain name was registered on October 2, 2023.

The disputed domain name does not resolve to an active website.

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's trademark is widely known (especially in its sector) and the Respondent cannot credibly claim to have been unaware of the mark.

The Complainant also argues that due to, (i) the nature of the disputed domain name (i.e., a domain name incorporating the Complainant's trademark plus an additional term, corresponding to a domain name held by a subsidiary of the Complainant), (ii) the chosen top-level domain (i.e., ".co" instead of ".com" held by a subsidiary of the Complainant), (iii) the timing and circumstances of the registration (i.e., following a highly sophisticated security breach) and (iv) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, that the Respondent's registration of the disputed domain name is in bad faith.

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 are being used in bad faith.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

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.

Based on the available record, the Panel finds the Complainant has established registered trademark rights 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 identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The website at the disputed domain name does not resolve to an active website.

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

C. Registered and Used in Bad Faith

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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Complainant asserts that the disputed domain name was registered for the purposes of selling to the Complainant. No evidence was provided of this.

The Complainant also asserts that by using disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's website or other online location. However, the disputed domain name is not in use.

The Complainant also states that the Complainant experienced a sophisticated security breach where at least one of the Complainant's colleague's account and personal computer was compromised. According to the Complainant, the disputed domain name was registered around the same time or following this security breach. However, no evidence was provided of this security breach, and the relationship between the disputed domain name and the security breach is unclear.

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. *Snowflake, Inc. v. Ezra Silverman*, WIPO Case No. [DIO2020-0007](#); *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

Although the Complaint provides no detail of the Complainant's business or reputation, the Panel is aware that the Complainant is a well-known property developer in Europe. The Respondent's website, located at "www.futurealgroup.co", is a placeholder website with no detail, but suggests that the Respondent is involved in financial services. The disputed domain name is identical to the Complainant's own domain name (merely changing ".com" to ".co"). The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name. Considering the above, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

Based on the available record, the Panel finds on balance 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, <futurealgroup.co>, be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: March 5, 2024