

ADMINISTRATIVE PANEL DECISION

iFIT Inc. v. Wessam Mehany
Case No. D2024-3547

1. The Parties

The Complainant is iFIT Inc., United States of America (United States), represented by Abu-Ghazaleh Intellectual Property (AGIP), Egypt.

The Respondent is Wessam Mehany, Egypt, represented by Inji Fathalla, Egypt.

2. The Domain Name and Registrar

The disputed domain name <ifit-eg.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 2, 2024. On September 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 3, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 4, 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 amended Complaint on September 9, 2024.

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 September 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2024. The Response was filed with the Center on October 7, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on October 15, 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.

On October 19, 2024, the Center received an unsolicited supplemental filing from the Complainant.

On October 21, 2024, the Center received an email from the Respondent objecting to the admissibility of the Complainant's unsolicited supplemental filing and requesting a right to address that supplemental filing if it were to be admitted.

On October 23, 2024, however, the Center received from the Respondent a Reply to Complainant's supplemental filing addressing substantive matters raised in the Complainant's unsolicited supplemental filing.

4. Factual Background

The Complainant is a health and fitness company which, though a health and fitness platform, provides adaptive, personalized workout experiences for its customers through proprietary software, interactive hardware and "experiential content". Some of its brands include NordicTrack®, ProForm®, Wieder, Freemotion® and Sweat®. According to the Complaint, the Complainant's technology is supported by more than 400 granted and pending patents.

The Complainant was founded in 1994 under the name Icon Health & Fitness Inc. It appears to have changed its name to its current name in August 2021. The Complainant's headquarters are in Utah in the United States. However, it also has offices in Paris France, Shanghai China, Sydney New South Wales, and Manchester in the United Kingdom.

The Complaint includes evidence that the Complainant's products and services have received numerous awards over the years.

The Complaint also includes evidence of a number of sales of the Complainant's products to at least one business in Egypt over the years since 2016. The invoices, like the website and other promotional materials bear a "logo" as set out in Section 5C below.

The Complainant's Facebook account has 240,000 followers; its Instagram page has 230,000 followers; its YouTube channel has almost 32,000 subscribers; and its Pinterest page 6,700 followers.

According to the Complaint, its iFit app has numerous users in Egypt. It also has videos as part of its experiential content in its walking tours series "Ancient Egypt Walking Tour with iFit guide Ramy Romany". There are 14 workouts in the series.

Google traffic data shows that over a 12 month period, there were over six million visitors to the Complainant's platform. About 5,500 of those were from Egypt.

The Complaint includes evidence that the Complainant has numerous registered trademarks around the world. The earliest registered trademark is United States Registered Trademark No 2,618,509, IFIT, which was registered in the Principal Register on September 10, 2002 in respect of fitness exercise machines in International Class 28 and conducting personal training services in International Class 41. This trademark claimed first use in commerce in February 1999. There are additional, later registrations.

While details of registrations in many countries have been provided, in the context of this proceeding, it is sufficient to note that the Complainant has five registered trademarks in Egypt:

| Number | Trademark | Registration date | Goods / services |
|-----------|-----------|-------------------|--|
| No 270860 | ifit | January 17, 2017 | All goods in International Class 28 |
| No 305594 | IFIT | June 24, 2024 | A wide range of measuring devices and computer software applications in International Class 9 |
| No 305596 | IFIT | August 10, 2016 | A range of application service provider services relating to fitness and personal training in International Class 42 |
| No 305597 | IFIT | August 10, 2016 | A range of information and consultation services including a website featuring information about nutrition, dieting, wellness and health in International Class 44 |

The Panel notes that Registered Trademark No 270860 was filed in Egypt on February 15, 2012 and the other Registered Trademarks were filed on August 5, 2014. The Complaint also includes evidence that the Complainant owns Registered Trademark No 305595, IFIT, in respect of Personal fitness training services and consultancy; physical fitness instruction in International Class 41. The Panel has been unable to confirm this registration in the available databases but the Complainant's evidence indicates the registration was only renewed in August this year.

The Complainant registered the domain name <ifit.com> in October 1997 and markets its products and services around the world from the website to which that domain name resolves.

According to the WhoIs report, the disputed domain name was registered on August 1, 2019.

It resolves to a website which appears to be offering for sale a range of sport supplements, protein and health drinks, or supplements. The website is in both English and Arabic. It features a logo which is also set out in Section 5C below.

The prices are stated in Egyptian pounds. According to the Shipping page, the Respondent ships from Cairo and Alexandria to anywhere in Egypt. The nutritional supplements are not "iFit" branded products but include a number of significant third party brands, including Isopure, BSN and JNX Sports which list the Respondent's company as their authorised distributor. The Respondent's website also appears to offer a limited range of merchandise such as cups, bags, and t-shirts – which do bear versions of the Respondent's logo.

The Respondent is the director of two companies incorporated under Egyptian law. The first, iFit for Trade and Distribution Company was incorporated under that name on October 10, 2019. It changed its name to Impact Import Company on October 3, 2022 – according to the Respondent, for "logistical reasons".

Some two months after that name change, the Respondent incorporated his second company on December 11, 2022 under the name iFit for Trade and Distribution Company. According to the Respondent, this was to preserve the validity of the registration of the disputed domain name.

On December 14, 2021, one of these companies¹ filed a trademark application in Egypt to register a figurative mark for company publications in International Class 16, services in class 35 in the field of classes 5 and 30 and nutritional tips in International Class 44.



¹ Given the date of the application, the Panel assumes it was the first company. However, recent documents issued by or filed with the Internal Trade Development Authority in Egypt use the iFit Trading and Distribution Co name.

The Respondent's (or, presumably, one of his company's) "iFit" account on Instagram has 53.3 thousand followers; the Facebook account has 26,000 followers; and the Pinterest account has 8,232 followers. Each of these accounts features the version of the Respondent's logo set out in Section 5C below.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (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.

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. The Complainant has opposed the acceptance of that application for registration.

A. Unsolicited supplemental filing

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

Where unsolicited supplemental filings are admitted, it is usually because the material corrects some error or addresses something raised in a Response which could not reasonably have been anticipated or which was not otherwise appropriate to deal with until a respondent's position on a particular point was clear.

In the present case, the Complainant's unsolicited supplemental filing addresses matters arising from the Response which could not fairly have been addressed in the Complaint or Amended Complaint for the most part. Accordingly, the Panel will admit it into the record and, in addition, the Respondent's substantive reply.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 has proven ownership of numerous registered trademarks for IFIT.

The Respondent contends that the Complainant fails at this threshold on numerous grounds including that the disputed domain name includes the distinguishing element "-eg", the different fields of activity of the parties, the reflection of the Respondent's company's name in the disputed domain name and differences between the parties' respective logos.

These matters, however, mistake the nature of the inquiry under the Policy at this stage.

The inquiry simply at this stage simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark and the expression “-eg”. “eg” is, of course, the country code for Egypt. Even without that consideration, however, the addition of this expression does not preclude a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or 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; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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.

The Respondent registered the disputed domain name well after the Complainant began using its trademark and also after the Complainant had registered its trademark.

It is not in dispute between the parties that the Respondent and his companies are not associated with, or licensed by, the Complainant in any way.

The Respondent contends that he is, through one of his companies, using the disputed domain name to make a good faith offering of goods or services – nutritional supplements. The Respondent points out this is a different commercial field to that which the Complainant operates in. He says this business has been operating for five years under the trademark “iFit” which is also the name of one of his companies. In addition, as noted above, one of the Respondent’s companies has applied to register a figurative trademark featuring “iFit” in Egypt for the activities of its business. That application was accepted but has been opposed by the Complainant. The application, however, was made only in December 2021 – more than two years after the Respondent registered the disputed domain name.

For convenience, the Panel sets out the form of logo used by the Complainant and one form used by the Respondent below:

Complainant



Respondent



On very close examination, there are a number of differences including the different device elements: an arrowhead versus a barbell and differences in letter styling as well as colouring. Nonetheless, there is also a strong resemblance. As the Respondent contends, the two logos appear to be used in different fields.

The Complainant points out that the Respondent’s first company was not incorporated under its original name until over two months after the disputed domain name was registered. Thus, the Complainant contends, it cannot be used to invoke the circumstances of paragraph 4(c)(ii). Moreover, as the Complainant points out, the mere registration of a company under a name incorporating a third party’s trademark is not in itself a blanket defence especially where the name is adopted well after the third party commenced using its trademark. See e.g., *Royal Bank of Canada v. RBC Bank*, WIPO Case No. [D2002-0672](#). It is possible that the company name was adopted in an attempt to give retrospective validity to the registration of the disputed domain name. It is noteworthy that the Respondent has not explained the “logistical reasons” for the change of name. In addition, the Respondent openly admits the reason for the incorporation of the second company some months later was in effect to preserve the validity of the disputed domain name. On the other hand, registering a domain name in the “.com” gTLD is a very quick and simple process compared to what may be involved in registering a company. And, in this case, the Respondent claims the processes for incorporating a company in Egypt are slow moving.

The Complainant contends that some of the invoices submitted by the Respondent to verify its sales of nutritional supplements have been “doctored” to include the Respondent’s logo. The Respondent says that the examples without the logo were simply copies which have not been printed out on letterhead. There appear to be other discrepancies but what they indicate is less clear. Ultimately, the Panel is not in a position to make a finding on this issue in the circumstances of this case.

As the Complainant contends, other documents submitted by the Respondent are quite recent and do not necessarily show use of the disputed domain name. One example is the Bank Misr agreement for the bank to provide payment services to the Respondent’s iFit for Trade and Distribution LLC. That is dated in 2024. The original document in Arabic, however, does include the company’s seal featuring a version of the Respondent’s logo.

For these and other reasons, the Panel has reservations about the case advanced by the Respondent. For example, there is no adequate explanation of the Respondent’s adoption of the name “iFit”. There are differences between the Complainant’s logo and that used by the Respondent and his companies. However, these are arguably at a level of detail that would not exclude a risk of confusion in the trademark sense. Against that, while the expression is not directly descriptive of either party’s products and services, in a world

of iPods, iPhones, iPads and other i-devices, the expression is arguably not at the highly distinctive level of the trademark spectrum.

Further, in the legal and commercial context with which the Panel is familiar, there would be considerable force in the Complainant's contention that someone aware of its trademark and reputation in respect of its goods and services would think, wrongly, that a person providing nutritional supplements under the Respondent's trademark was associated with the Complainant in some way. Whether that would also be the case under Egyptian law and commercial circumstances bearing in mind the Respondent's business appears to be targeted at the Egyptian market is not so clear to the Panel.

Overall, it does appear that the Respondent and his companies have been providing nutritional supplements for some five years in Egypt under the "iFit" sign. The Respondent (or one of his companies) appears to have built up a substantial following in that time. This may well be, as the Complainant contends, an infringement of the Complainant's trademark rights in Egypt. Whether that is the case or not appears to be one of the issues in the pending opposition proceedings brought by the Complainant following the acceptance of the Respondent's pending trademark application. Given the legal and commercial context, that appears to be a more appropriate venue to address the issues raised by the Complainant's dispute with the Respondent in this proceeding.

Taking all these matters into account, the Panel considers the Complainant has not established the Respondent does not have rights or legitimate interests in the disputed domain name. The Panel reaches that conclusion with considerable reservation. Moreover, the Complainant's position may well be vindicated through the opposition process under Egyptian trademark law. However, that remains to be seen. While the Complainant has challenged whether the Respondent's business has been in operation since 2019, the materials available in this proceeding do not permit the Panel to form a sufficiently concluded view to reject the Respondent's claims. Properly exploring those issues requires the more extensive powers available to the trademark authorities and the Courts.

Accordingly, the Panel finds the Complainant has not established the second requirement under the Policy.

D. Registered and Used in Bad Faith

As the Complainant must fail, no good purpose would be served by considering this requirement under the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied, without prejudice to the Complainant's right to refile if its opposition to the registration of the Respondent's trademark is successful or the nature of the Respondent's business changes.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 29, 2024