

ADMINISTRATIVE PANEL DECISION

QlikTech International AB v. Yahya Zumrut

Case No. D2022-0474

1. The Parties

The Complainant is QlikTech International AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Yahya Zumrut, Turkey.

2. The Domain Name and Registrar

The disputed domain name <qlikforts.com> (the “Disputed Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 11, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 14, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2022 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 February 15, 2022.

The Center verified that the Complaint together with the amendment to the Complaint/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 February 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 24, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on March 29, 2022. 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 Swedish company. It was founded in 1993 and provides a range of products which deal with the analysis of data. It describes these as “platform solutions for self-service data visualization, guided analytics applications and embedded analytics”. A wide range of customers, comprising companies of all sizes, across all industries and geographies, use the Complainant’s products to visualize and explore information and data. One of its products is a “hybrid cloud analytics service” called QLINK FORTS.

The Complainant holds several registered trademarks for the term QLIK FORTS – the earliest of which is European Union Trademark No. 018401647 which was applied for on February 17, 2021. These trademarks are referred to as the QLIK FORTS trademark in this decision. The Complainant also holds a European Union word trademark for the term QLIK - registration No. 001115948 filed on March 23, 1999, and registered on May 5, 2000, and an International word trademark for the term QLIK - registration No. 839118, granted on May 14, 2004.

The Complainant’s products and services are sold throughout the world and advertised in a variety of media, including via the Complainant’s website at “www.qlik.com” and have been recognized by the business and the software community for several industry awards.

The Respondent registered the Disputed Domain Name on February 17, 2021. It resolves to a webpage which indicates it is for sale for USD 988.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows:

The Disputed Domain Name is identical or confusingly similar to the Complainant’s QLIK FORTS trademark.

The Respondent has no rights or legitimate interests in the terms “QLIK FORTS”.

The Disputed Domain Name was registered and is being used in bad faith. It was manifestly chosen with the Complainant in mind. The Complainant says as follows; “It is therefore obvious that the Respondent was aware of the Complainant’s trademarks and business when registering the domain name. Also, the fact that the website of the disputed domain name including the Complainant’s [sic] trademark misleads visitors not only to believe the Respondent are the owner of the mark but also take advantage of the goodwill and draw the consumers attention to competitors which will make profit loss for the compliant [sic]. This stipulates bad faith”.

A. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given that the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel

considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the QLIK FORTS and the QLIK trademarks. It does not matter for the purposes of the first element that the QLIK FORTS trademarks all post-date the date the Disputed Domain Name was registered – see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.1. The Panel finds the Disputed Domain Name is identical or confusingly similar to the QLIK FORTS trademark. The only difference is the omission of the space between QLIK and FORTS which is an immaterial difference, particularly as spaces cannot be used in a domain name for technical reasons. Moreover, the Panel finds the Disputed Domain Name is confusingly similar to the QLIK trademark. See [WIPO Overview 3.0](#) at sections 1.7 and 1.8.

It is well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the QLIK FORTS trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation. It also has no other meaning save in relation to the Complainant and its products.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 the respondent 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.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the QLIK FORTS or QLIK trademarks. The Respondent registered the Disputed Domain Name the same day the Complainant filed an application for the QLIK FORTS trademark. Moreover, the Complainant has prior rights in the QLIK trademark which precede the registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

The Panel did not find the Complainant's explanation of how the Disputed Domain Name is being used particularly easy to understand. It appears to relate to a different factual situation to the one that actually exists – the Disputed Domain Name simply resolves to a webpage indicating it is for sale.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel concludes that (i) applies as the Disputed Domain Name is offered for sale. It is unlikely that anyone other than the Complainant would be interested in buying it. The price stipulated is USD 988 which is likely in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name. The Panel infers that the Respondent acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring it for valuable consideration in excess of its documented out-of-pocket costs.

The fact that the Disputed Domain Name was registered before the earliest date the QLIK FORTS trademark was registered does not on the facts of this case prevent a finding of bad faith. See [WIPO Overview 3.0](#) at section 3.8.2:

“Domain names registered in anticipation of trademark rights

As an exception to the general proposition described above in 3.8.1, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application".

In the present case the Disputed Domain Name was registered the same day the Complainant filed an application for the QLIK FORTS trademark and the Panel concludes was done so to unfairly capitalize on the Complainant's nascent trademark rights.

Moreover, the Complainant rights in the QLIK trademark precede the registration of the Disputed Domain Name by many years.

The Panel also notes that the Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel concludes that none exists.

Accordingly, the Panel finds the Respondent has registered and used the Disputed Domain Name in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <qlikforts.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: April 6, 2022