

ADMINISTRATIVE PANEL DECISION

Fundsmith LLP v. Privacy Service Provided by Withheld for Privacy ehf /
ffundsmithequityfund ffundsmithequityfund

Case No. D2022-1025

1. The Parties

The Complainant is Fundsmith LLP, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / ffundsmithequityfund ffundsmithequityfund, Nigeria.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2022. On March 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 24, 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 March 25, 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 March 28, 2022.

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 March 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on April 21, 2022.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on May 13, 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 Fundsmith LLP, a well-known investment management company headquartered in London, United Kingdom, having offices also in Connecticut, United States of America, and in Mauritius. The Complainant was created in 2010, and by the end of 2021, has managed large sums on behalf of wealth managers and private banks throughout the world. The Complainant operates three different investment funds, one of them called Fundsmith Equity Fund”, which is also the expression appearing as a logo identifying the Complainant’s daily operations. Details on the presence of the Complainant in the market, as well as articles about the Complainant and its founder is displayed in Annex 3 of the Complaint.

The Complainant owns prior rights in the FUNDSMITH trademark, notably United Kingdom Registration No. 909432436 filed on October 8, 2010, as well as European Union Registration No. 009432436 for the same mark, also applied on October 8, 2010. Copies of these registrations were presented as Annex 11 of the Complaint.

The Complainant has established rights in the mark FUNDSMITH.

The disputed domain name was registered on March 9, 2022. The disputed domain name resolves to an active website that shows several direct references to the Complainant, as shown by Annexes 7, 8, and 9 of the Complaint.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name <fundsmithequityfund.com> is confusingly similar to the Complainant’s trademark registered and used worldwide. In fact, the disputed domain name is composed by the term “fundsmith”, which is identical to the Complainant’s registered mark, together with the expression “equity fund”.

The expression chosen by the Respondent to compose the disputed domain name together with the mark FUNDSMITH and “equity fund” – is directly related to the Complainant’s main activities – and is used by the Complainant to identify one of its funds, the Fundsmith Equity Fund. The descriptive terms do not negate the confusing similarity between the disputed domain name and the Complainant’s trademark. On the contrary, they lead to confusion, given the presence of the Complainant’s mark.

The Complainant owns several registrations for the trademark FUNDSMITH, as evidence by Annex 11 to the Complaint.

The Complainant further contends that Respondent does not have any rights or legitimate interests in the disputed domain name. The disputed domain name adopted by the Respondent – a reproduction of the Complainant’s registered mark associated with a descriptive expression – shows a clear intention of misleading the Internet users, as it links to a website that bears several references to the Complainant and to services rendered by the Complainant, such as the Complainant’s address (Annex 7 to the Complaint); the Fundsmith Equity Fund (Annex 8 to the Complaint) and a photo of the Complainant’s chief executive and CIO (Annex 9 to the Complaint). In addition, the disputed domain name is configured to send and receive emails, which can be used as a tool to a fraudulent scheme.

The Complainant underlines that the overall aspects of disputed domain name give the impression that it is in all ways associated with the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent sent informal communications to the Center on March 28, 2022, March 31, 2022, and April 8, 2022, asking what is going on and to be refunded money. The Respondent did not submit a formal Response.

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- i. the disputed 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 to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Regarding the first of the elements, the Panel is satisfied that the Complainant has presented adequate proof of having rights to the trademark FUNDSMITH, which is registered and clearly used regularly throughout the world.

Further, the Panel finds that disputed domain name is confusingly similar to the trademark belonging to the Complainant, since this mark is entirely reproduced in the disputed domain name registered by the Respondent with the addition of the terms “equity fund”. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. Further, it is well established that “.com”, as a generic Top-Level Domain (“gTLD”), may be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s mark (section 1.11.1 of the [WIPO Overview 3.0](#)).

Hence, the Panel concludes that the first element of the Policy has been satisfied by the Complainant in this dispute.

B. Rights or Legitimate Interests

The Panel understands that the mark FUNDSMITH is naturally associated with the Complainant, since it is not only registered in its name, but also has been used to identify the services rendered by the Complainant for several years.

Further, the Complainant provided evidence of the renown of the mark FUNDSMITH and the full range of investment funds offered to its clients, one of which is named Fundsmith Equity Fund. Hence, the Panel considers that the Respondent, in all likelihood, could not be unaware of the mark FUNDSMITH, and its direct relation to the Complainant.

In fact, the Complainant presented evidence that the disputed domain name has been used to link to a website bearing not only the mark FUNDSMITH but several references to the Complainant and to the investment services rendered, bearing even a photo of the chief executive and CIO for the Complainant, as show the Annexes 7 to 9 of the Complaint.

The Panel is satisfied that the Complainant has made *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name. This has not been rebutted by the Respondent.

While the Respondent used the name "ffundsmithequityfund" for the purposes of registering the disputed domain name, that does not in itself give rise to rights or legitimate interests in the disputed domain name.

Thus, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name. For this reason, the Panel believes that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

It is clear to the Panel that the Respondent has in all probability registered the disputed domain name with the purpose of taking advantage of the Complainant's mark.

The Panel finds that the disputed domain name was likely registered to mislead consumers – hence the addition of the terms "equity fund". Further, the additional expression can surely be considered an allusion to the Complainant's core business, a fact from which the Respondent may well profit by giving Internet users the illusion that the disputed domain name belongs to the Complainant.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant, and the Panel accepts that the disputed domain name may be intended for illegitimate purposes.

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain name and that the Respondent registered and is using the disputed domain name in bad faith.

The Panel finds that the Complainant has also proved the third element of the Policy.

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, <fundsmithequityfund.com>, be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: May 27, 2022