

## **ADMINISTRATIVE PANEL DECISION**

**Fortnum & Mason PLC v. Privacy Protection / Domain /or Administrator  
Case No. D2022-2763**

### **1. The Parties**

The Complainant is Fortnum & Mason PLC, United Kingdom, represented by Boulton Wade Tennant, United Kingdom (“UK”).

The Respondent is Privacy Protection, United States of America / Domain /or Administrator, Nigeria.

### **2. The Domain Name and Registrar**

The disputed domain name <fortnumnandmason.com> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 July 29, 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 August 2, 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 August 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2022.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on September 2, 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 Fortnum & Mason PLC, an English company proprietor of registrations for the trademark FORTNUM & MASON in many jurisdictions.

The trademark FORTNUM & MASON has been used with respect to a department store in Piccadilly in central London, UK, with a history from 1707, which is known for retailing a very wide range of items.

It is possible to purchase the Complainant's goods through partners in other countries, such as the United States of America, Japan and across Europe; and at "www.fortnumandmason.com".

The Complainant owns an international portfolio of trademark registrations for FORTNUM & MASON, including the following:

- European Union Registration No. 9036278, for FORTNUM & MASON, registered on October 28, 2010;
- United Kingdom Registration No. UK00909036278, for FORTNUM & MASON, registered on October 28, 2010;
- United States Registration No. 4336734, for FORTNUM & MASON, registered on May 21, 2013;
- United States Registration No. 0939980, for FORTNUM & MASON, registered on August 1, 1972.

The Complainant also owns the domain name <fortnumandmason.com>, registered on April 3, 1997.

The disputed domain name was registered on July 15, 2022 and at the time filing the Complaint it resolved to a website with pay-per-click ("PPC") links. The Complainant alleges that at the time the Complaint was filed, it was also used to install malware on the visitor's computer.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is a clear typosquat of the Complainant's rights and primary domain name. The Complainant cites the comment in *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#) which refers to typosquatting as "the intentional registration of a domain name that is a common or obvious misspelling of a mark and supports a finding of confusing similarity."

The disputed domain name entirely incorporates the "fortnum" prefix, the "mason" suffix and the "and" element seen in the Complainant's primary domain name.

In addition, the "&" of the Complainant's trademark rights would be understood as meaning "and."

The only difference between the Complainant's rights and the disputed domain name is the inclusion of the letter "n" in the middle of the disputed domain name and after the letter "m." The Complainant says that this inclusion is unlikely to be noticed by Internet users.

According to the Complainant, the Respondent's aim is to confuse consumers into believing that the disputed domain name belongs to the Complainant.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Likewise, the Complainant has not given permission, licensed or authorized the use by the Respondent of the disputed domain name.

According to the Complainant, although the owner of the disputed domain name is hidden behind a privacy shield, there is no indication that the Respondent has been known by the name FORTNUM N AND MASON. The Complainant alleges that the disputed domain name is highly similar to the Complainant's FORTNUM & MASON rights and has been deliberately targeted by the Respondent due to the connection with the Complainant.

The Complainant mentions that the Respondent would be aware of the Complainant, since the Complainant is world famous, and the choice of the disputed domain name by the Respondent can only be with the intention of targeting the Complainant. Moreover, the high similarity between the disputed domain name and the Complainant's FORTNUM & MASON rights would prove the Respondent's bad faith.

The Complainant does not suggest visiting the website to which the disputed domain name resolves due to the attempted installation of malware. It notes that on visiting the disputed domain name, the Complainant's IT team received the following warning:

"Malware Details: Web traffic scanning alert Infection: Malware.JS/Refresh.G1 URL"

The Complainant argues that the attempt to install malware on the visitor's computer is a clear example of the Respondent's bad faith. Additionally, the Complainant claims that the disputed domain name resolves to a holding page.

The Complainant is also concerned that the disputed domain name could be used for spear phishing given the clear typosquat nature of the disputed domain name.

Finally, the Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

As per paragraph 4(a) of the Policy, the Complainant must prove that:

- (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.

### **A. Identical or Confusingly Similar**

The evidence demonstrates that the Complainant is the owner of trademark registrations for FORTNUM & MASON.

The disputed domain name incorporates the Complainant's trademark FORTNUM & MASON in its entirety. The addition of the letter "n" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, as it is hardly noticed, and the Complainant's trademark is recognizable within the disputed domain name.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9 states that a domain name consisting of an intentional misspelling of the complainant's trademark (*i.e.*, typosquatting) is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

As numerous prior UDRP panels have also recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See section 1.7 of the [WIPO Overview 3.0](#).

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain name is confusingly similar to the Complainant's trademark.

## **B. Rights or Legitimate Interests**

The Respondent has not submitted any response to the Complaint.

There is no evidence that the Respondent has any authorization to use the Complainant's trademark or to register domain names containing the Complainant's trademark FORTNUM & MASON.

There is no evidence that the Respondent is commonly known by the disputed domain name.

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute the Respondent has made 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. Moreover, the reproduction of the entire trademark of the Complainant with the mere addition of the letter "n" is a clear case of typosquatting. Thus, the construction of the disputed domain name is such to cause confusion and cannot constitute fair use.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

## **C. Registered and Used in Bad Faith**

The trademark FORTNUM & MASON is registered by the Complainant in different jurisdictions (as reflected in section 4 of this Decision). These registrations predate the registration date of the disputed domain name, and the disputed domain name incorporate the Complainant's trademark in its entirety with the addition of the letter "n". The Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant's FORTNUM & MASON trademark is distinctive and well-known worldwide. Thus, a domain name that comprises such a mark is undoubtedly already suggestive of the registrant's bad faith.

The disputed domain name merely includes the letter "n" after the letter "m" which in this case may indeed serve as additional evidence of the registration of the disputed domain name in bad faith, considering that it is a clear case of typosquatting. It is easy for an Internet user to be deceived into accessing the website corresponding to the disputed domain name while trying to visit the Complainant's original website.

In addition, based on the Complaint, the Panel finds that the website related to the disputed domain name is being used in bad faith, by trying to install malware on a visitor's computer.

Furthermore, in the current circumstances, the Panel finds it most likely that Respondent registered and used the disputed domain name to intentionally attract, for commercial gain, Internet users to the PPC website linked to the disputed domain name as per paragraph 4(a)(iv) of the Policy

Finally, the Respondent has chosen not to respond to the Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#): "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith."

The Respondent also used a privacy protection service to hide its identity, which further confirms bad faith registration and use. See section 3.6, [WIPO Overview 3.0](#).

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademark and that the Respondent's attempt of taking undue advantage of the trademark FORTNUM & MASON for as described in paragraph 4(b)(iv) of the Policy has been demonstrated.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain name has been registered and are being used in bad faith.

## 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 <fortnumnandmason.com> be transferred to the Complainant.

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: September 14, 2022