

ADMINISTRATIVE PANEL DECISION

TELUS Corporation v. Salman Zahid, Fasin Fashion
Case No. D2022-3699

1. The Parties

The Complainant is TELUS Corporation, Canada, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America (“United states”).

The Respondent is Salman Zahid, Fasin Fashion, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <telusz.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. On October 24, 2022 and October 25, 2022, the Center received two emails from the Respondent. On November 1, 2022, the Center notified the Parties that it would proceed with the panel appointment.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on November 11, 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 Canadian telecommunications company listed on the Toronto Stock Exchange and the New York Stock Exchange that operates internationally, including in Pakistan and the United Arab Emirates (“UAE”). According to the Complaint, the Complainant receives USD 16.8 billion of annual revenue and has 16.9 million customer connections spanning wireless, data, IP, voice, television, entertainment, video, and security, including 9.29 million mobile phone subscribers in 2021, and its services have been recognized with various Canadian awards.

The Complainant owns over 100 registered trademarks for the TELUS mark, including:

- Canadian Trademark Registration No. TMA421361, TELUS, word, registered on December 24, 1993, in class 35;
- United States Trademark Registration No. 2396640, TELUS, word, registered on October 24, 2000, in classes 38, 37, and 42;
- UAE Trademark Registration No. 348686, TELUS, word, registered on August 2, 2021, in class 9; and
- Pakistan Trademark Registration No. 594425, TELUS, word, registered on December 10, 2020, in class 9, (collectively the “TELUS mark”).

Prior decisions under the Policy have recognized the reputation of the TELUS mark, particularly in Canada.¹

The Complainant further owns the domain name <telus.com> (registered on December 14, 1994), which resolves to the Complainant’s main corporate website.

The disputed domain name was registered on January 24, 2021, and it resolves to a website, in English language, that offers for sale various devices, including smart phones, smart watches, laptops, tablets, and video games consoles. This site includes in its heading the term “telus”, followed by the letters “fzco” in much smaller size, and it indicates in its home page: “[...] We are specialist wholesalers in brand new original sim free mobile phones. As a global importer, we offer our trade customers a one stop supply solution, as our experienced team is fully equipped to serve a wide range of products at large amounts. The company has access to large suppliers and customers in Europe, North America and the Middle East.[...]” The “Who We are” section of this site further indicates that “[...] From our beginnings in Canada, we have grown into a global company with a footprint on three continents [...]”, “[...] TELUS OPERATIONS: Our commercial offices are based in USA, DUBAI, & Canada. We operate warehouse facilities across the world’s major trade hubs, we do smartphone sales, and keep physical stock. Our locations in USA, Dubai & Canada make us easily accessible to the major markets globally. Telus offers wide range of SKUs in many electronic items [...]” This site does not inform about the lack of relationship of the owner of the site of that of the disputed domain name and the Complainant. This website further contains a contact form, a telephone number, an email address and the physical address of a warehouse located in Dubai’s airport.

On June 7, 2022, the Complainant sent a cease and desist letter to the Respondent via courier to the address included in the website linked to the disputed domain name, which obtained no response.

¹ See, e.g., *TELUS Corporation v. Domain Admin, Privacy Protect, LLC / Mayur Mangesh Rege, Mayur Consultants*, WIPO Case No. [D2018-0388](#); and *Telus Corporation v. Manuel Pitkov*, WIPO Case No. [D2018-2013](#)

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain name is confusingly similar to the TELUS mark because it contains this trademark in its entirety, with the addition of the letters "fz," and the Top-Level Domain ("TLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. The overall impression of the designation of the disputed domain name is one of being connected to the Complainant's trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never authorized the Respondent to register the disputed domain name or use the TELUS mark in any manner. To the Complainant's knowledge, the Respondent is not commonly known by the disputed domain name and has never acquired any trademark rights in the disputed domain name. According to the Whois record, the registrant of the disputed domain name is not "Telus" or "Telus FZ" or anything similar thereto. By using the disputed domain name in connection with a website that purports to offer goods and services in competition with the Complainant, the Respondent has failed to create a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name under the Policy. The Respondent's actions are misleading and illegitimate.

The disputed domain name was registered and is being used in bad faith. The TELUS mark was first registered almost 29 years ago, and it is widely known. Given the fame of the Complainant's trademark and its significant presence (including in Pakistan, where the Respondent is located according to the Whois record, and in UAE, where the Respondent's business is located according to the content of his website), it is implausible that the Respondent was unaware of this mark when he registered the disputed domain name. By using the disputed domain name in connection with a website that purports to offer the same goods and services with which the Complainant uses its reputed trademark (related to mobile phones), the Respondent is creating a likelihood of confusion with the TELUS mark, constituting bad faith pursuant to paragraph 4(b)(iv) of the Policy. The Respondent, that according to the Whois record is located in Pakistan, registered the disputed domain name very shortly after the Complainant obtained its trademark registration for the TELUS mark in this country, which is a strong indication of bad faith. Furthermore, the failure to respond to the demand letter sent by the Complainant is additional evidence of bad faith.

The Complainant has cited previous decisions under the Policy as well as various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not submit a formal Response.

In two subsequent emails addressed to the Center, the Respondent acknowledged receipt of the notification of the Complaint, and substantially indicated that in his opinion the disputed domain name is different to the Complainant's prior rights. Additionally, he indicated that his business operates in UAE, and his products and services are different to the ones of the Complainant. The Respondent invited this Panel to visit the website linked to the disputed domain name "www.telusfz.com" to check these circumstances, and offered to avoid any issue by changing the disputed domain name for the corresponding country code TLD ("ccTLD") <telusfz.ae>.

The Respondent further indicated that his company has a qualified team to discuss this matter, appointing its "I.T Dept team" to handle this matter.

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

The first element functions as a standing requirement under the Policy.

The Complainant indisputably has rights in the registered TELUS mark. The disputed domain name incorporates this trademark in its entirety, followed by the letters “fz”, which does not avoid the confusing similarity. The TELUS mark is recognizable in the disputed domain name, and the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11 of the [WIPO Overview 3.0](#).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the Respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, that may establish rights or legitimate interests in the disputed domain name in order to rebut the Complainant's *prima facie* case.

The Respondent, however, has not replied to the Complainant's contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name, except for his indication that, in his opinion, the disputed domain name is not similar to the Complainant's trademark, and the Parties operate in a different market and a different field. The Respondent further requested this Panel to consult his website at the disputed domain name.

The Panel, under its general powers, articulated *inter alia* in paragraph 10 of the Rules, has consulted both the Respondent's website at the disputed domain name and the Complainant's website “www.telus.com,” and has corroborated that the Parties operate in a similar field, both providing various services related to telecommunications, and selling smart phones, among other devices related to this sector.

The Panel further notes that the Complainant operates internationally, including in Pakistan (where the Respondent is located according to the Whois record), and in the UAE (where the Respondent operates according to the content of his website and one of his emails).

The Panel therefore considers that the Parties operate in the same market and the same or similar field.

The Panel further notes that the disputed domain name incorporates the TELUS mark adding the letters “fz”, which commonly stands for “Fly Dubai”,² the airline of the UAE, and may also point to the Complainant and its trademark, as an indication of its official store or its authorized distributor or retailer in Dubai’s airport, or for UAE. The Panel therefore considers that the disputed domain name generates an implied affiliation and risk of confusion.

The Panel further finds that the said implied affiliation and confusion is enhanced by the content of the Respondent’s website. This site contains various expressions that allude to an origin and connection to Canada and United States, countries where the Complainant originates and operates for many years (nearly 30 years), and a global character that do not correspond to the Respondent’s allegations. In this respect, the Respondent’s website indicates a connection to “large suppliers and customers in Europe, North America, and the Middle East”, and indicate, “[...] from our beginnings in Canada, we have grown into a global company with a footprint in three continents.” The Respondent’s business further identifies itself in the website linked to the disputed domain name as “TELUS OPERATIONS” or “Telus”, indicating that its commercial offices are located in USA, Dubai and Canada.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent’s conduct generates confusion or affiliation with the Complainant and its trademark, and cannot be considered as a *bona fide* offering under the Policy.

These case cumulative facts and circumstances point to consider that the Respondent has not produced evidence to rebut the Complainant’s *prima facie* case, and lacks of any rights or legitimate interests in the disputed domain name. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

- (i) the TELUS mark is reputed in the telecommunications sector and the Complainant operates internationally, including in the countries where the Respondent is located according to the WhoIs record (Pakistan) and the country where the Respondent’s business operates according to his allegations and the content of his site (UAE);
- (ii) the disputed domain name incorporates the Complainant’s trademark adding the letters “fz”, which may contribute to generate a risk of confusion or implied association, creating the impression that the disputed domain name refer to official stores, authorized distributors, retailers or warehouses of the Complainant in Dubai’s airport and/or in UAE;
- (iii) the website that is linked to the disputed domain name enhances the implied affiliation and risk of confusion, by prominently including the TELUS mark, calling its business “TELUS OPERATIONS” or simply “Telus,” alluding to a connection to the same countries where the Complainant originates and operates for

² The letters “FZ” are the International Air Transport Association (IATA) code for the airline Fly Dubai, as well as part of this airline’s flight tracker (FZ / FDB).

nearly 30 years (Canada and United States), and to a global character (operating in three continents);

(iv) the Respondent's website operates in the same field and the Complainant's business (telecommunications, offering for sale mobile phones and other telecommunication devices); and

(v) the Respondent has not offered any plausible explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to reply to the Complainant's cease and desist communication or to the Complaint.

The Panel further notes that, according to the Complainant's allegations, the disputed domain name was registered shortly after the Complainant acquired the registration for its TELUS mark in Pakistan (where the Respondent is located according to the Whois record), and considers that this circumstance may corroborate the Respondent's bad faith.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered targeting the Complainant's trademark with the intention of obtaining a free ride on its established reputation, seeking to mislead Internet users to believe that there is a connection between the disputed domain names and the Complainant, to increase the traffic to the Respondent's site for a commercial gain, which constitutes bad faith.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under 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 <telusfz.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: November 21, 2022