

ADMINISTRATIVE PANEL DECISION

GIFI (SAS) v. Sarp Agel
Case No. D2022-5012

1. The Parties

The Complainant is GIFI (SAS), France, represented by Ipside, France.

The Respondent is Sarp Agel, Turkey.

2. The Domain Name and Registrar

The disputed domain name <gifiporn.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 December 28, 2022. On December 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 2023, 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 January 13, 2023.

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 January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on February 16, 2023. 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

Since the 1980's, the Complainant and its predecessors have operated a chain of home furniture discount stores branded with the name "GiFi". As of September 2021, there were some 566 stores worldwide, mostly in France.

The Complainant owns many trade marks for GIFI including French stylised trade mark No. 93501431, filed on December 20, 1993, registered on July 8, 1994, in classes 3, 7 through 9, 11, 15, 16, 18, 20, 21, 24 through 28, and 30, and French word trade mark. No. 3574006, filed on May 7, 2008, registered on October 10, 2008, in classes 9, 35, and 38.

The Complainant has operated a website at "www.gifi.fr" since 2002.

The disputed domain name was registered on September 18, 2021.

The disputed domain name has been used to resolve to a website displaying pornographic content.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant's trade mark is well-known.

The disputed domain name is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the Complainant's mark in its entirety and differs only by addition of the term "porn".

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to use its trade mark in a domain name or otherwise.

There is no evidence that the Respondent is commonly known by the disputed domain name or that it has engaged in any activity demonstrating that it possesses any rights or legitimate interests in the disputed domain name.

The Respondent is not making legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

The Complainant's trade mark, which is readily available on public trade mark databases, long predates registration of the disputed domain name.

All of the top Google search results for "gifi" relate to the Complainant.

The term "gifi" has no particular meaning, and its combination with "porn" in the disputed domain name indicates that the Respondent had the Complainant's trade mark in mind when registering the disputed domain name.

The Respondent's website can be accessed in all territories where the Complainant owns rights and it is not necessary to understand English to visit the site, which contains only videos.

The disputed domain name has been used to damage the reputation of the Complainant's mark, which is famous in France in particular and is aimed at "a family public".

The Respondent is using the disputed domain name in bad faith to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trade mark and website.

The Respondent has also infringed the Complainant's intellectual property rights by using the Complainant's mark on its website.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark GIF1, as well as unregistered trade mark rights deriving from the Complainant's extensive and longstanding use of that mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant's distinctive trade mark, which remains readily recognisable within the disputed domain name, plus the additional term "porn", which does not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent has used the disputed domain name for a pornography site with no obvious connection to the word "gifi", but with the obvious potential to take unfair advantage, or damage the reputation of, the Complainant's distinctive trade mark. See further under section 6C below.

Such use of the disputed domain name could not be described as *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

In the absence of a plausible explanation from the Respondent as to why it has registered the disputed domain name and used it for pornography services in the face of the confusing similarity with the Complainant's distinctive mark, the Panel concludes that most likely the Respondent was seeking to take unfair advantage by profiting from traffic generated by the Respondent's use of the Complainant's mark and/or to damage the Complainant's reputation by associating it with pornography (possibly with a view to selling the disputed domain name to the Complainant).

Furthermore, the Respondent has not come forward to deny the Complainant's assertions of bad faith and it is difficult to conceive of any legitimate reason why the Respondent would wish to register and use the disputed domain name.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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, <gifiporn.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: March 2, 2023