

ADMINISTRATIVE PANEL DECISION

Fronius International GmbH v. Richard Hochberg, euess
Case No. D2023-1126

1. The Parties

The Complainant is Fronius International GmbH, Austria, represented by BRP Renaud und Partner mbB, Germany.

The Respondent is Richard Hochberg, euess, France.

2. The Domain Name and Registrar

The disputed domain name <fronius-solar.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 March 14, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2023, 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 (Sav.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 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 amendment to the Complaint on March 21, 2023. The Respondent¹ sent two informal emails to the Center on March 21, 2023. The Complainant filed two further amendments to the Complaint on April 12, 2023.

The Center verified that the Complaint together with the amendment to 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”).

¹ The first email was sent from an email address associated with the disputed domain name by a person calling himself “Richard” and stating that he owned the disputed domain name. The Panel thinks it reasonable to infer that this is the Respondent or at least a person affiliated with the Respondent. The second email was sent from a different email address but the Panel infers from the content that it was sent by the same person as before.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on May 4, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on May 8, 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

The Complainant supplies solar-related products under the mark FRONIUS.

The Complainant owns a number of trade marks for FRONIUS including European Union Trade Mark No. 000385765 filed on September 23, 1996, registered on October 5, 1999, in classes 1, 6, 8, 9, and 42.

The disputed domain name was registered on June 6, 2022.

At the time of filing the Complaint and when reviewed by the Panel on May 19, 2023, the disputed domain name resolved to a website branded “Sylus” (which is the name of an e-commerce platform). The home page included a photograph of some boots entitled “Brace yourself! Winter is coming” as well as the title “Latest products”, followed by a list of the Complainant’s products with descriptions, prices and images (including the Complainant’s logo). The bottom of the page stated: “Welcome to our store, your number one online shop that gives you the very best products. You can choose from the very best clothes and shoes from our offer.”

5. Parties’ Contentions

A. Complainant

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

The disputed domain name is confusingly similar to the Complainant’s trade mark as it simply adds the descriptive term “solar”.

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

The Complainant has not authorised the Respondent to use its trade mark.

It is not possible to check out and actually order the goods offered on the Respondent’s website and so the Respondent is not in a position to actually deliver the Complainant’s goods which the Respondent is advertising for sale. The Respondent’s use of the Complainant’s trade mark is unlawful without the Complainant’s consent in those circumstances.

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

The above circumstances show that the Respondent registered the disputed domain name primarily to disrupt the Complainant’s business and/or to create a likelihood of confusion with the Complainant’s mark.

B. Respondent

The Respondent did not submit a formal response.

The following is a summary of the Respondent's two informal emails to the Center on March 21, 2023.

The Respondent queries why the disputed domain name is under discussion at all as he Respondent acquired it legally and the disputed domain name is being used for a lawful business, which involves the installation of solar panels. The Respondent further argues that he already buys the Complainant's "inverters" and mounts them for his customers, and that his website is currently just a template that is under construction. He plans to launch the site in a few weeks.

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 FRONIUS.

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 "solar", 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 Complainant claims that the Respondent's website is illegitimate in that it is not possible to actually the order the Complainant's products which the Respondent is purporting to offer for sale. The Respondent did not file a substantive response. In the email communications mentioned in section 5B above, the Respondent asserts that it is a reseller and installer of the Complainant's products and that its website is only a template, with the full version still under construction.

For the purposes of this decision, the Panel will proceed on the assumption that, as mentioned in section 3 above, the party sending informal communications is the Respondent (or is at least affiliated with the same) and that he is indeed a reseller and installer of the Complainant's products as he claims. And, as the Respondent has not filed a Response to put forward any evidence or explanation as to how the alleged full version of its site would differ in any material respect from the template version currently available, the Panel will proceed as if the Respondent were using the current version of its site to resell the Complainant's products.

The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services when reselling a complainant's goods or services, a respondent must comply with certain conditions (the "Oki Data requirements").

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's (lack of) relationship with the trade mark holder, as explained in section 6C below.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be *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.

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

The Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

First, the disputed domain name comprises the Complainant's distinctive mark plus an additional term that is directly within the Complainant's field of commerce, namely "solar".

Second, the Respondent has used the disputed domain name for a website that creates the impression that it is officially associated with the Complainant by prominent use of images of the Complainant's products, including the Complainant's logo, as well as the lack of any disclaimer explaining that the Respondent is not officially connected with the Complainant.

Third, albeit that the website is allegedly a "template", the features of the site outlined in section 4 above including obscure references to the sale of clothes and boots, are not indicia of a legitimate site.

It is reasonable to infer that the Respondent was intent on commercial gain.

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

Finally, in response to the Respondent's assertion that it acquired the disputed domain name "legally", the Panel would add that this proceeding is not concerned with whether the Respondent somehow broke the law but, rather, with an assessment of whether or not the Respondent registered and used the disputed domain in bad faith in accordance with the Policy – which was incorporated into the contract under which the Respondent acquired the disputed domain name. Moreover, the implied assertion (in saying the domain name was acquired "legally") that merely because a domain name is available for registration this would somehow make it permissible in all circumstances to register and use such domain name is totally devoid of

merit. For the above reasons, the Panel finds that the Respondent has indeed registered and used the disputed domain name 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, <fronius-solar.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: May 22, 2023