

ADMINISTRATIVE PANEL DECISION

Factoring Express LLC v. Cooper Wilson

Case No. D2023-1228

1. The Parties

The Complainant is Factoring Express LLC, United States of America (“United States”), internally represented.

The Respondent is Cooper Wilson, United States.

2. The Domain Name and Registrar

The disputed domain name <factoringexpres.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 March 21, 2023. On March 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 22, 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 27, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 21, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on April 27, 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

According to the Complainant's website at "www.factoringexpress.com", the Complainant is a company based in Miami, Florida offering services to independent transportation companies since 2017.

The Complainant is the owner of United States trademark registration 87666403 for FACTORING EXPRESS in Class 36, filed on October 31, 2017, and registered on June 5, 2018. Details of this registration were annexed to the Complaint.

The disputed domain name was registered on March 18, 2023. It does not link to any website. Annexed to the Complaint was an email chain showing that on March 20, 2023, the disputed domain name was used to send an email to a client of the Complainant, purporting to emanate from an employee of the Complainant, reading,

"Kindly confirm the bank details you have on file as some of our accounts are undergoing audit and can't process payments. Pending when we are done with the audit, so sorry for the inconveniences.

Your prompt response is highly appreciated."

The Complainant's client suspected the email was a scam and reported it to the Complainant.

This Complaint was filed the next day, March 21, 2023.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is identical or confusingly similar to the Complainant's registered trademark, FACTORING EXPRESS. The Complainant further asserts that the Respondent has no legitimate rights or interests in the disputed domain name, because it was using it in connection with fraudulent activities. Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith, as evidenced by its use in connection with the sending of a fraudulent email impersonating one of the Complainant's employees and seeking disclosure of the recipient's bank details.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences, as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant has shown that it has registered trademark rights in FACTORING EXPRESS. The disputed domain name differs from the Complainant's registered trademark only in the omission of the final letter "s", which is easy to overlook. The Top Level Domain ".com" may be disregarded for the purpose of assessing confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.11).

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has provided evidence that the disputed domain name has been used in connection with the sending of an email fraudulently impersonating an employee of the Complainant and seeking bank account details from the recipient. Such activities are commonly described as phishing scams.

[WIPO Overview 3.0](#), section 2.13.1 states, "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has shown evidence that the Respondent used the disputed domain name just two days after it was registered in connection with the sending of a phishing email to a client of the Complainant. The Respondent has made no effort to respond to this evidence or to the Complainant's assertions generally.

[WIPO Overview 3.0](#), section 3.1.4, states that "the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith". In addition, [WIPO Overview 3.0](#), section 3.4, states that "use of a domain name for purposes other than to host a website may constitute bad faith", such as "sending email [or] phishing", especially where "the respondent's use of the domain name [is] to send deceptive emails" for purposes such as "to solicit payment of fraudulent invoices by the complainant's actual or prospective customers".

The Panel finds that the disputed domain name was registered and has been 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, <factoringexpres.com> be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: May 10, 2023