

ADMINISTRATIVE PANEL DECISION

Fane International Limited v. Nguyen Thanh Bien, Thanh Bien
Case No. D2023-1502

1. The Parties

The Complainant is Fane International Limited, United Kingdom (“UK”), represented by Gevers Legal N.V., Belgium.

The Respondent is Nguyen Thanh Bien, Thanh Bien, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <faneaudio.pro> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7, 2023, 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.

On April 12, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On April 14, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 9, 2023.

The Center appointed Teruo Kato as the sole panelist in this matter on May 22, 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 Complaint, the Complainant is a UK company that was established in 1958 with a strong heritage in sound engineering excellence. The Complainant contends that it produces high-quality audio equipment ranging from high quality audio transducers over microphones to a range of loudspeakers with versatile mounting facilities designed for convenience and security. The Complainant further contends that it enjoys a reputation within the sound engineering sector and its products are being sold in several countries worldwide, including some European Union Member States, but also some Asian countries like China, India and Viet Nam.

The Complainant contends that it owns, among others, Vietnamese trademark registration No. 40171711000 (figurative mark, which contains the word elements of "FANE") registered on September 14, 2011 in class 9; Chinese trademark registration No. 6062639 FANE (word mark) registered on January 21, 2010 in class 9; and Chinese trademark registration No. 56085647 FANE PRO AUDIO (word mark) registered on December 7, 2021 in class 9.

The disputed domain name was registered on February 28, 2022, and resolves to a website offering audio products for sale, including products from the Complainant.

The Respondent is Nguyen Thanh Bien, Thanh Bien of Viet Nam.

The Complainant requests that the disputed domain name be transferred to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of the FANE trademark.

The Complainant also contends that the disputed domain name is confusingly similar to the Complainant's FANE trademark.

The Complainant further contends that the Respondent is not a licensee nor an authorized exclusive agent of the Complainant, that it is not authorized to use the Complainant's trademark FANE and that the Respondent does not make any *bona fide* use or trade under the disputed domain name.

The Complainant also contends that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the

language of the Registration Agreement, subject to the authority of the panel to determine otherwise having regard to the circumstances of the administrative proceeding. The Panel notes that in the present case the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Complainant has filed the Complaint in English and requests that the language of the proceeding be English on the following grounds:

- (a) the Complainant is a UK company where English is one of the official languages;
- (b) the Respondent is a Vietnamese individual and, while English is not an official language of Viet Nam, English classes are compulsory in Vietnamese schools and therefore, the vast majority of the Vietnamese population has a proficient knowledge of the English language;
- (c) tourism has exploded in Viet Nam in recent years with millions of visitors from the main English speaking countries visiting the country every year and, according to the Complainant, more than 50% of the population being comfortable to speak English, especially in the main cities of Viet Nam; and
- (d) the Whois data indicates that the Respondent is living in Yen Bai, Viet Nam, which is, according to the Complainant, a city close to Hanoi with more than 100,000 inhabitants which is also the capital of the Yen Bai Province.

The Panel notes the somewhat limited submissions of the Complainant regarding the language of proceedings. For example the Complaint contains no particular assertion relating to subparagraph (vi) of section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), which cites "potential unfairness or unwarranted delay in ordering the complainant to translate the complaint".

The Panel is, however, mindful of the overriding requirements as contemplated in paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition.

To this end the Panel visited the site to which the disputed domain names resolves and noted that (1) there was no Japanese language words observed in the Respondent's webpage and that (2) an advanced level of English vocabulary was used in describing one of the products on sale, namely, "▼ Classical double echo effect, more comfortable singing. ▼ LCD screen is easy to set the data. ▼ Single reverb and stereo can switch. ▼ With feedback function. ▼ 5.1 balanced outputs, can be flexible with power amplifier. ▼ With center and surround output channels, volume can be adjusted independently. ▼ SUB channel frequency: 45—250Hz, auto decay, decay rate is adjustable. ▼ 3 bands EQ is for MIC, effect and music. ▼ Initial and max volume are for music and MIC".

Further, the Panel notes that the Whois information provided by the Complainant shows that, as of March 7, 2023, the disputed domain name was held at the Name Servers located at "tenten.vn". The Panel understands that "TENTEN" is a group company of GMO of Japan (which is the Registrar), and this understanding matches with the logo stating "tenten vn by GMO" prominently displayed at the top left of its homepage. The Panel also notes that its webpages offer selections of two languages, *i.e.* the Vietnamese and English, but no Japanese language option is offered.

Accordingly, although the Panel acknowledges that GMO of Japan serves as the Registrar and that it confirmed that the language of the registration agreement is Japanese, the Panel finds no indication that the Respondent is conversant with the Japanese language.

The Panel further notes from the records that on April 12, 2023, the Respondent was invited by the Center, in both Japanese and English, to indicate any objection to the proceeding being conducted in English by April 17, 2023 and the Respondent did not respond to this by this deadline nor later. Further, on April 18, 2023, the Center informed the Respondent, in both Japanese and English, that the Center has decided,

under the circumstances of this case, to: “1) accept the Complaint as filed in English; 2) accept a Response in either English or Japanese; 3) appoint a Panel familiar with both languages mentioned above, if available.” Accordingly, the Panel would have accepted a response in Japanese, but no reply was submitted by the Respondent.

These facts and findings suggest to the Panel that there would be no practical and meaningful benefits to be gained by the Panel’s ordering the Complainant to submit the Japanese translation of the Complaint.

In the circumstances, in accordance with paragraph 11(a) of the Rules, the Panel decides that English be the language of the proceeding. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel must determine whether (a) the Complainant has a trademark or service mark; and (b) whether the disputed domain name is identical or confusingly similar to that trademark or service mark.

The Complainant submitted evidence of trademark registrations and the Panel is satisfied that the Complainant is the owner of, among others,

- Vietnamese trademark registration No. 40171711000 (figurative mark, which contains the word elements of “FANE”) registered on September 14, 2011, in class 9.
- Chinese trademark registration No. 6062639 FANE (word mark) registered on January 21, 2010, in class 9; and
- Chinese trademark registration No. 56085647 FANE PRO AUDIO (word mark) registered on December 7, 2021, in class 9.

As to the confusingly similar element for the purposes of the Policy, the Panel has proceeded to compare the disputed domain name to the trademark rights which have been proved.

Section 1.11.1 of the [WIPO Overview 3.0](#) states that “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘info’, ‘.com’, ‘.club’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”, and the Panel finds no reason why this established practice should not be applied to the present case.

Apart from the generic Top-Level Domain (being “.com”), the Complainant contends that the disputed domain name contains its trademark FANE in its entirety, together with additional words “AUDIO” and “PRO”.

In this connection, the Panel notes section 1.7 of the [WIPO Overview 3.0](#) which states that “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

In the circumstances, the Panel sees no reason why these established practices should not be applied to the present case and holds that the disputed domain name is identical or confusingly similar to the Complainant’s trademarks. Accordingly, the Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate a respondent's rights or legitimate interests in a domain name:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels is that the burden of proof in establishing no rights or legitimate interests in respect of a domain name rests with the complainant in making out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Complainant contends with relevant evidence that: (i) the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

As regards (ii) above relating to whether or not the Respondent has been commonly known by the disputed domain name, the Complainant advised the Panel that the Respondent claimed in its webpage "that it was founded in 2007" but no documentary evidence has been provided to the Panel to prove or disprove such claim by the Respondent.

The Panel is satisfied that the Complainant has established a *prima facie* case in respect of the sub-paragraphs 4(c) (i) and (iii) of the Policy. By not submitting a response, the Respondent has failed to overturn such *prima facie* case. Further, the Respondent has also failed to invoke any of the defenses as set out in paragraph 4(c) of the Policy, in particular sub-paragraph 4(c)(ii).

In the Complaint the Complainant submitted its views on the so-called Oki Data-criteria, on the assumption that the Respondent might raise the defense of *bona fide* offering of goods pursuant to sub-paragraph 4(c)(i) of the Policy as cited above. The Panel notes, however, that the Respondent has not invoked such defense in this proceeding.

Accordingly, and based on the Panel's further findings below, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

To fulfill the third requirement, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

In the present case, the Panel is satisfied with the Complainant's contention that the registrations of the FANE trademarks took place many years ago and it had established its reputes internationally in its business field long before.

In the circumstances, the Panel holds that the Respondent was most likely to have known of the Complainant, its products, and trademarks prior to registering the disputed domain name on February 28,

2022 (see section 3.2.2 of the [WIPO Overview 3.0](#)) and holds that the Respondent registered the disputed domain name in bad faith.

As to the use of the disputed domain name, the Complainant contends that the disputed domain name resolves to a webpage which claims “that it is the exclusive distributor of many famous audio brands around the world like CF Audio, DbAcoustic, DK and Relacart”. The Panel also notes the Complainant’s contention and supporting evidence that “the figurative trademark registration for FANE of the Complainant is appearing in the top left corner of all webpages of the Respondent’s website”. The Complainant has demonstrated that the website to which the disputed domain name has been resolving prominently utilizes the Complainant’s FANE trademark (including the Complainant’s logo), and as a consequence the Respondent’s website effectively falsely suggests endorsement by the Complainant.

The Panel notes that no counter-argument has been submitted by the Respondent.

Taking all matters into careful consideration, the Panel holds that the Respondent registered and is using the disputed domain name in bad faith. The Panel therefore concludes that the third requirement of the Policy has been met.

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 <faneaudiopro.com> be transferred to the Complainant.

/Teruo Kato/

Teruo Kato

Sole Panelist

Date: June 5, 2023