

## **ADMINISTRATIVE PANEL DECISION**

Freeman Holding, LLC v. Elle Lively  
Case No. D2023-1580

### **1. The Parties**

The Complainant is Freeman Holding, LLC, United States of America (“United States”), represented by Vedder Price P. C., United States.

The Respondent is Elle Lively, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <freeman-cds.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 April 11, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 14, 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 April 18, 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 April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed Ezgi Baklacı Güllökar as the sole panelist in this matter on June 7, 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 is a global event planning and management company, established in 1927 and the owner of the FREEMAN trademark registrations in the United States. The relevant FREEMAN trademarks have been registered before the USPTO continually since at least 2002, and the United States trademark with the registration no. 5,518,973 covers the goods and services related to event planning and management services, according to evidence provided with Annex 4. The Complainant also holds the ownership of the domain name <freeman.com> around March 16, 1997 as evidenced by Annex 18. The Complainant has been continuously using its FREEMAN trademarks since at least 1927.

The Complainant has been associated with the term “Convention Data Services” and the related trademark with the registration no. 3,316,373, registered on October 23, 2007. In addition, the Complainant has also used the acronym “CDS” standing for the term “Convention Data Services” and used such acronym in its domain name <cdsreg.com> as evidenced with the Annex 20. The Complainant has been continuously using its CONVENTION DATA SERVICES trademarks for over 16 years.

In addition to above, the Complainant has also been associated with the term “Connecting People, Driving Events” and the related trademark with the Registration No 5,035,942 as evidenced with the Annex 20 and has also been using the stated term on the domain name <cdsreg.com>.

The Complainant holds the FREEMAN United States trademarks with the registration nos. 5,518,973, registered on July 17, 2018; 5,844,659, registered on August 27, 2019; 2,645,625, registered on November 5, 2002; 1,880,065, registered on February 21, 1995 and 2,033,349, registered on January 28, 1997; Canada trademark registration with the no. TMA670617 registered on August 21, 2006, European Union Intellectual Property Office (“EUIPO”) trade mark with the registration no. 1488779, registered on July 31, 2019, United Kingdom trademark registration no. 1488779, registered on March 4, 2020, Hong Kong, China trademark registration no. 300593479, registered on August 24, 2006 and Singapore trademark registration no. 40201921273U, registered on July 31, 2019.

The disputed domain name was registered on December 3, 2022, and resolved a website purportedly offering services identical or related to those of the Complainant. The Respondent has also communicated with the Complainant’s customers with an email address for purposes of a phishing scam, as evidenced with Annex 17.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

Identical or confusingly similar

As stated above, the Complainant holds the trademark registrations for the terms Freeman, Convention Data Services, Connecting People, Driving Events. It is asserted by the Complainant that the disputed domain name and the Complainant’s trademark registrations are confusingly similar to each other and referred numerous previous UDRP panel decisions.

The Complainant further asserts that the Respondent provides nearly identical goods/services covered by the Complainant’s marks with the disputed domain name, offering variety of goods/services under its

FREEMAN, CONVENTION DATA SERVICES and CONNECTING PEOPLE. DRIVING EVENTS. marks including the goods/services befalling to the Complainant's scope of business supported with the evidence Annex 16.

#### Rights or legitimate interests

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name given the fact that the Respondent is not authorized to use the Complainant's FREEMAN, CONVENTION DATA SERVICES, and the CONNECTING PEOPLE. DRIVING EVENTS. marks, and the acronym CDS for CONVENTION DATA SERVICES trademarks and the Respondent has not been granted any right to use the FREEMAN trademarks or any variation thereof.

In addition, the Complainant argues that the Respondent does not have any connection or affiliation with the Complainant; the Respondent has not made a *bona fide* use of the disputed domain name nor engaged in any demonstrable preparations to use it in connection with a *bona fide* offering of goods or services; and the Respondent's use of the disputed domain name is used to facilitate an illegal activity, and such activity can never vest rights or legitimate interests.

#### The disputed domain name was registered and used in bad faith

The Complainant points out that the disputed domain name was registered in December 2022 and has been being used in bad faith since then. The Complainant argues that the disputed domain name was registered with the intentions to attract Internet users to the disputed domain name for commercial gain and aimed to have intentionally similar terms.

Furthermore, it has been stated by the Complainant that the Respondent has directly made representations, impersonating the Complainant by communicating one of the Complainant's customers by using a digital business card, of which includes the mark FREEMAN CDS.

In addition to above, the Complainant evidenced with the Annexes 16 and 21 that under the relevant section of the website with the disputed domain name, the Respondent directs users to "make all checks payable to the Data Insight Solutions LLC" and the detected company's address also coincides with another domain name, of which the decision proceedings are still ongoing before WIPO.

Previous UDRP panels have consistently recognized that registration of domain names, diverting the Internet users from the Complainant's website is evidence of bad faith.

Lastly, the Complainant stated that the Respondent is providing its customers lead retrievals from trade show events and the Complainant would not sell such information to third parties under no circumstances, as such action would hinder the trust that had been gained by the Complainant in the sector. Accordingly, since the Respondent has started their use on the disputed domain name, the Complainant's customers reflected their concerns on the matter to the Complainant, causing harm to the Complainant's reputation.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

#### **B. Respondent**

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

#### **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it has well-established rights in the FREEMAN, CONVENTION DATA SERVICES and CONNECTING PEOPLE. DRIVING EVENTS. trademarks.

The disputed domain name <freeman-cds.com> incorporates the Complainant's FREEMAN trademark in its entirety with the additional element "cds" at the end. Although the disputed domain name is not identical to the trademarks of the Complainant, the aforementioned addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel accepts that the generic Top-Level Domain ("gTLD") may indeed be ignored. See [WIPO Overview 3.0](#), section 1.11.1.

In the light of the above, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's trademarks and the first element of paragraph 4(a) of the Policy is satisfied.

#### **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving that a Respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the Respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel notes that the Respondent is indeed not commonly known by the disputed domain name. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's FREEMAN trademarks or its derivatives.

As it is seen with the provided evidence, the disputed domain name resolves to a website, of which have similar and/or almost identical goods/services provided to the customers. Therefore, the Panel is on the view that this itself shows that the Respondent is aware of the Complainant and its website. Moreover, the Respondent uses the disputed domain name to send phishing emails impersonating the Complainant and attract the Complainant's customers who mistakenly believe that the site is associated with the Complainant. The Panel finds that such use of the disputed domain name cannot amount to a *bona fide* offering of goods and services or a legitimate noncommercial or fair use. See [WIPO Overview 3.0](#), section 2.13. See also *Beiersdorf AG v. PrivacyGuardian.org / Edward Peter Inc.*, WIPO Case No. [D2019-0149](#) (domain name used in attempted fraudulent email scheme designed to be deceptive and confusing, and an impersonation of the complainant by the respondent, cannot amount to *bona fide* offering of goods and services or a legitimate noncommercial or fair use).

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the disputed domain name was registered, the Respondent was clearly aware of the FREEMAN trademarks and its derivatives as the Complainant's trademark registrations as well as its domain names predate the registration date of the disputed domain name. The Panel notes that the Respondent directly contacted the Complainant's customers to send fraudulent emails impersonating the Complainant and as such, caused harm to the reputation of the Complainant. The composition of the disputed domain name including the term "cds", an abbreviation of the Complainant's trademark CONVENTION DATA SERVICES, further increases the level of confusing similarity with the Complainant.

The Panel also notes that copying the business activities of the Complainant and openly leading the customers to make payments at a specific non-related company is an indication that the Respondent is trying to attract Internet users for commercial gain. This finding further supports the Panel's conclusion that the Respondent intentionally registered the disputed domain name in order to impersonate the Complainant and used it in bad faith to take unfair advantage of the Complainant's trademark. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name has been registered and used in bad faith by the Respondent.

### **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 <freeman-cds.com> be transferred to the Complainant.

*/Ezgi Baklacı Gülkökar/*

**Ezgi Baklacı Gülkökar**

Sole Panelist

Date: June 21, 2023