

ADMINISTRATIVE PANEL DECISION

Phoenix Life Limited v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2023-1702

1. The Parties

The Complainant is Phoenix Life Limited, United Kingdom, represented by Pinsent Masons LLP, United Kingdom.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <phoenixfinancialscvs.com> is registered with Media Elite Holdings Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 18, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 (Person(s) unknown (Name Redacted for Privacy)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 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 21, 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 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 17, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on May 23, 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 Phoenix Life Limited, a subsidiary of Phoenix Group Holdings Plc, the United Kingdom's largest long-term savings and retirement business.

The PHOENIX brand was initially founded as Phoenix Assurance, which has been trading since 1786. Over the years, policies from a number of different life companies have been brought together into Phoenix Life.

The Complainant's parent company, Phoenix Group Holdings Plc, was listed on the London Stock Exchange on September 24, 2018, and is also listed in the FTSE All-Share, FTSE 350 High Yield, FTSE 350, and FTSE 100 indices.

The Complainant has provided evidence of ownership of trademark registrations consisting of, or comprising PHOENIX, including the following (Annex 11 to the Complaint):

- Irish trademark registration No. 245619 for PHOENIX (word mark), registered on January 13, 2011, in international class 35 and 36;
- Cayman Islands trademark registration No. 1564248 for PHOENIX (word mark), registered on March 3, 2011, in class 36;
- Irish trademark registration No. 244307 for PHOENIX IRELAND (word mark), registered on August 8, 2008, in class 36;
- Irish trademark registration No. 244359 for PHOENIX GROUP (figurative mark), registered on June 3, 2008, in classes 35 and 36;
- Jersey trademark registration No. 9048 for PHOENIX (word mark), registered on January 24, 2011, in class 35.

The Complainant is also the owner of the domain name <thephoenixgroup.com>, registered on January 6, 1997, and used by the Complainant to promote its services under the trademark PHOENIX.

The disputed domain name <phoenixfinancialscvs.com> was registered on February 11, 2019, and redirects to random websites, including websites with pornographic content and/or dating sites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark PHOENIX in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the descriptive term "financial" and letters "scvs" and the generic Top-Level Domain (gTLD) ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that, considering the disputed domain name redirects to a number of different websites, including ones with pornographic content and/or dating sites and that the redirects change on a regular basis, the Respondent is in no way using the disputed domain name for a *bona fide* offering of goods or services or a legitimate noncommercial use.

The Complainant further contends that, even if the disputed domain name was being used to sell legitimate goods or services, the website at the disputed domain name does not accurately disclose the Respondent's relationship (or, indeed, lack thereof) with the Complainant, which means that consumers may believe the Complainant owns the disputed domain name.

The Complainant further submits that, considering the goodwill and reputation associated with the PHOENIX brand and services, the Respondent registered the disputed domain name in full knowledge of the Complainant's activities, misappropriating the Complainant's valuable trademark.

Moreover, the Complainant states that the Respondent has in no way been authorized to use the Complainant's trademarks in any way and is not commonly known by the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent probably registered the disputed domain name to create a false impression of association with the Complainant and to use it to deceive Internet users, especially considering the use of the word "financial" in the disputed domain name, referring to the Complainant's field of activity. The Complainant submits that, by doing so, the Respondent is not only damaging the Complainant's business and reputation, but also unfairly exploiting the value of the Complainant's trademarks.

The Complainant also states that the Respondent uses a privacy shield and conceals its real identity, which arguably further supports the assertion that the Respondent is intentionally abusing the disputed domain name and is acting in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark PHOENIX based on the trademark registrations for the word mark PHOENIX cited under section 4 above and the related registration details submitted as Annex 11 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark PHOENIX since it entirely reproduces the trademark with the mere addition of the descriptive term "financial", the letters "scvs" (which could be interpreted as an abbreviation for "services") and the gTLD ".com", which is not sufficient to prevent a finding of confusing similarity under the first element (sections 1.8 and 1.11.1 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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 Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy for the following reasons.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Moreover, there is no element from which the Panel could infer the Respondent's rights or legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the Respondent's use of the disputed domain name to redirect users to random websites, including websites publishing adult content, does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademarks.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of i) the well-known character of the trademark PHOENIX in the field of financial services and ii) the confusing similarity of the disputed domain name with the Complainant's trademark, which is entirely reproduced in the disputed domain name with the addition *inter alia* of the descriptive term

“financial”, directly referring to the Complainant’s services, the Respondent very likely registered the disputed domain name with the Complainant’s trademark in mind.

The Panel also finds that the Respondent’s use of the disputed domain names in connection with random redirections to various websites, including websites with pornographic content and/or dating sites, amounts to bad faith under paragraph 4(b)(iv) of the Policy, since the Respondent intentionally attempted to attract Internet users to such websites for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the websites to which the disputed domain name redirects and the related content.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <phoenixfinancialscvs.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: June 9, 2023