

ADMINISTRATIVE PANEL DECISION

ZenByCat v. Eric Albiano

Case No. D2023-2038

1. The Parties

Complainant is ZenByCat, United States of America (“United States”), represented by Kushnirsky Gerber PLLC, United States.

Respondent is Eric Albiano, United States.

2. The Domain Name and Registrar

The disputed domain name <fipwarrior.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 May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 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 (NAMECHEAP INC) and contact information in the Complaint. The Center sent an email communication to Complainant on May 15, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 16, 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 Respondent of the Complaint, and the proceedings commenced on May 19, 2023. In accordance with the Rules paragraph 5, the due date for Response was June 8, 2023, and Respondent submitted a Response on that date, having also made informal communications with the Center related to its forthcoming Response on May 15, and 17, 2023. Complainant submitted an unsolicited Supplemental Filing on June 19, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on June 29, 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

Complainant ZenByCat is a non-profit organization based in California that provides guidance to cat owners looking for treatment options and support in connection with Feline Infectious Peritonitis, commonly abbreviated as FIP.

Complainant operates a website at the domain name <fipwarriors.com> and a Facebook Group page called "FIP Warriors," through which it provides resources to and solicits donations from approximately 50,000 members.

Complainant is the proprietor of United States Trademark Registration 6438042 for FIP WARRIORS (word mark), registered on August 3, 2021, for services in class 44, and United States Trademark Registration 6438041 for FIP WARRIORS (word mark), registered on August 3, 2021, for services in class 36. Both registrations claim a date of first use of September 19, 2016.

The disputed domain name was registered on November 16, 2022. At the time of filing the Complaint, it resolved to a webpage featuring images of cats and purportedly offering for sale treatments for a cat ailment known as Feline Infectious Peritonitis, abbreviated as FIP.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that it has been using the mark FIP WARRIORS in connection with Feline Infectious Peritonitis ("FIP") since 2016 and is the best-known FIP support organization in the United States. The disputed domain name is identical to Complainant's mark and domain name, with the final "s" removed.

Under the second element, Complainant states that Respondent chose to use a slight variation on Complainant's FIP WARRIORS domain and trademark years after Complainant began using the mark and launched its website. Complainant is known to be the largest and most well-known FIP treatment resource in the United States and indeed the world. Respondent is typosquatting on Complainant's domain name and is using its website to profit from sales of FIP medication.

Under the third element, Complainant states that it created and launched its website at the domain name <fipwarriors.com> on April 18, 2019, and has been using the FIP WARRIORS mark in connection with FIP treatment and fundraising for FIP treatment since 2016. Complainant is one of the most well-recognized names in the fight against FIP. Respondent not only copied Complainant's domain but also copied Respondent's Facebook Group, having launched a copycat FIP WARRIOR Facebook Group which was taken down at Complainant's request. Respondent is intentionally typosquatting on one of the most well-known domains in the FIP treatment community to profit from consumer confusion to sell FIP medication to users who mistakenly believe Respondent is affiliated with Complainant when it is not.

Complainant requests transfer of the disputed domain name.

B. Respondent

On May 17, 2023, Respondent sent an email stating that "We will submit evidence in the near future to prove

that FIP Warrior is a word that should not be restricted. It does not belong to an organization or a person. It is a word that can be used by the public.”

Respondent’s Response may be summarized as follows:

Complainant has instructed Internet users to place malicious orders through Respondent’s website, causing these products to be returned and placing a burden on Respondent. Respondent, while a business, prefers to establish a partnership with those committed to saving FIP cats. In this spirit, Respondent often provides free products to cat owners in financial difficulties.

Complainant’s FIP WARRIORS trademark is registered in classes 36 and 44, which do not include the provision of FIP products. Respondent’s website provides FIP products.

Respondent registered the disputed domain name through Namecheap on November 16, 2022.

The disputed domain name is legally registered by Respondent. Complainant only registered the trademark FIPWARRIORS and does not offer FIP products, unlike Respondent. Respondent does not believe it diverts traffic from Internet users seeking FIP WARRIORS, but rather obtains search traffic from its Meta Business Suite and from natural traffic from searches for the keyword FIPWARRIOR. Respondent’s Facebook group has only two fans and does not get the traffic of Complainant’s Facebook group.

6. Discussion and Findings

6.1 Procedural Issue: Admissibility of Complainant’s Supplemental Filing

Paragraph 10 of the UDRP Rules vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition.

Paragraph 12 of the UDRP Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.6.

The Panel has reviewed Complainant’s unsolicited Supplemental Filing of June 19, 2023. The record already reflects Complainant’s Complaint and Amended Complaint. The Panel finds that the Supplemental Filing does not contain any new evidence or information necessary for the consideration of this matter, but consists of challenges to Respondent’s arguments. Accordingly, the Panel does not find it necessary to consider this Supplemental Filing nor refer it to Respondent for comment.

6.2 Substantive Issues

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

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

Under 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”.

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the FIP WARRIORS mark through registration in the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

For purposes of the first element, the Panel notes that the classes for which Complainant's trademark is registered is not relevant. See [WIPO Overview 3.0](#), section 1.1.2.

In comparing Complainant's mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this trademark as the trademark is clearly recognizable within the disputed domain name, save for the lack of the final letter “s.” This is clearly a deliberate misspelling of Complainant's trademark. See [WIPO Overview 3.0](#), section 1.9.

It is the well-established view of UDRP panels that a generic Top Level Domain such as “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the FIP WARRIORS trademark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent affirms that it is the registrant of the disputed domain name. The Panel notes that the fact of registration alone does not confer rights or legitimate interests in a domain name. According to established UDRP practice, to demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent 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 Panel finds that Respondent has not provided evidence in support of a claim to rights or legitimate interests. There is no evidence that Respondent is commonly known by the disputed domain name. The disputed domain name consists of an obvious misspelling of Complainant's FIP WARRIORS trademark.

UDRP panels have held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Moreover, the disputed domain name resolves to a commercial website offering products for sale. Evidence of such activity using a domain name nearly identical to Complainant's mark indicates Respondent's lack of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.3.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b) provides that for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds that the evidence in the record has demonstrated that Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its FIP WARRIORS trademark predate the registration of the disputed domain name. The disputed domain name is an obvious misspelling of Complainant's trademark and Respondent demonstrates knowledge of Complainant's trademark rights.

Respondent states his belief that Complainant's mark "a word that should not be restricted. It does not belong to an organization or a person. It is a word that can be used by the public." However, Respondent does not provide any evidence or arguments to challenge Complainant's trademark rights. Rather, Respondent freely admits to generating Internet traffic for his commercial website by using the keyword "FIPWARRIOR", which differs from Complainant's trademark by one letter. The evidence in the record also demonstrates that Respondent was engaging in similar activities on the Facebook platform. Moreover, while the element "FIP" may be a common acronym for Feline Infectious Peritonitis, its combination with "warrior(s)" seems more likely than not a deliberate construction by Respondent with the intent to mislead unsuspecting Internet users expecting to find Complainant.

The Panel finds that, on this record, it is clear that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's mark. See [WIPO Overview 3.0](#), section, 3.1.4.

The Panel finds that Complainant has established the third element under paragraph 4(a) 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, <fipwarrior.com>, be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: July 13, 2023