

ADMINISTRATIVE PANEL DECISION

Victor Rackets Ind. Corp. and Sports Group Denmark A/S v. EPC Alternative Sources LTD

Case No. D2023-2080

1. The Parties

The Complainants are Victor Rackets Ind. Corp., Taiwan Province of China, and Sports Group Denmark A/S, Denmark, represented by Patrade A/S, Denmark.

The Respondent is EPC Alternative Sources LTD of Cyprus, represented by Euomarks, Netherlands.

2. The Domain Names and Registrar

The disputed domain names are <forzaactionwear.com>, <forzaactivewear.com>, <forzaafrica.com>, <forzaaustria.com>, <forzabelgium.com>, <forzabiofood.com>, <forzabokszakken.com>, <forzaboxing.com>, <forzabulgaria.com>, <forzacroatia.com>, <forzacyprus.com>, <forzaczech.com>, <forzaengland.com>, <forzaestonia.com>, <forza-eu.com>, <forzaeu.com>, <forzaeurope.com>, <forzafightgear.com>, <forzafightinggear.com>, <forzafinland.com>, <forzafitnessfashion.com>, <forzafitnesslife.com>, <forzafitwear.com>, <forzafrance.com>, <forzagermany.com>, <forza-gloves.com>, <forzagreece.com>, <forzaholland.com>, <forzahungary.com>, <forzaireland.com>, <forza-italy.com>, <forzalabel.com>, <forzalatvia.com>, <forza-life.com>, <forza-lifestyle.com>, <forzalifestyles.com>, <forzalifestyletech.com>, <forzalingerie.com>, <forzalithuania.com>, <forzaluxembourg.com>, <forza-malta.com>, <forza-mma.com>, <forzanetherlands.com>, <forzanetworks.com>, <forzaniightwear.com>, <forzaoriginal.com>, <forzapoland.com>, <forzaportugal.com>, <forzaromania.com>, <forzarussia.com>, <forzascotland.com>, <forzasfitnesswear.com>, <forzaslovakia.com>, <forzaslovenia.com>, <forzasolutions.com>, <forzasouthafrica.com>, <forzaspain.com>, <forza-sport.com>, <forzasportfashion.com>, <forzasportlife.com>, <forzasportsclothing.com>, <forzasportsfashion.com>, <forzasportsgear.com>, <forzasportslife.com>, <forzasportsnutrition.com>, <forzasportssupplements.com>, <forzasportsworld.com>, <forza-sweden.com>, <forzaunderwear.com>, <forzaworld.com>, <forzaworldint.com>, <forzaworldinternational.com>, <forzaworlds.com>, <forzaxl.com>, <forzaxxl.com>, <forzaxxx.com>, <forzayourchoice.com>, <forza4u.com>, <theforzalifestyle.com>, and <weareforza.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in

connection with the disputed domain names. On May 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 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 May 23, 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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. The Response was filed with the Center on June 19, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 5, 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. Consolidation of Proceedings / Identity of Respondent

The registrar-disclosed registrants of the disputed domain names are, variously, Gregorios Iordamidis; Gregorios Iordamidis, EPC Alternative sources Ltd; Richard Riedman, EPC Alternative sources Ltd; and EPC Alternative Sources LTD. The Panel is satisfied on the evidence provided by the Complainant that the beneficial holder of all the disputed domain names is EPC Alternative Sources LTD, the other registrar-named registrants having registered the relevant disputed domain names on behalf of that entity. The Panel also notes that the Response has been filed on behalf of EPC Alternative Sources LTD and does not dispute that all of the disputed domain names are under the common ownership of that party. In the circumstances, the Panel directs that the proceedings be consolidated and that EPC Alternative Sources LTD shall stand as the sole Respondent in the proceeding.

5. Factual Background

The Complainant Victor Rackets Ind. Corp is a company registered in Taiwan Province of China. It is a manufacturer of sporting equipment including tennis and badminton rackets and is the holder of various trademark registrations for the mark FORZA. The Complainant Sports Group Denmark A/S is a licensee of the relevant trademarks for the purposes of use and enforcement. The two Complainants are referred to interchangeably as "the Complainant" in the remainder of this Decision.

The Complainant's trademark registrations include European Union Trade Mark ("EUTM") registration number 000432443 for the word mark FORZA, registered on August 6, 1998 for "Clothing, including leisure wear and sportswear; footwear, including sports shoes; headgear" in International Class 25, and "Games and playthings; gymnastic and sporting articles (not included in other classes); badminton rackets, tennis rackets, squash rackets, balls, including tennis and racket balls, shuttlecocks of feathers, shuttlecocks of nylon" in International Class 28. The registration is subject to pending proceedings for cancellation brought by the Respondent in the European Union Intellectual Property Office ("EUIPO").

The Complainant holds additional trademark registrations for the mark FORZA in the United Kingdom ("UK"), China, Switzerland, Republic of Korea and Japan. The UK registration is subject to pending proceedings for cancellation brought by the Respondent in the UK Intellectual Property Office ("UK IPO").

The Respondent is a company registered in Cyprus. It is a retailer of sportswear and the owner of the following trademark registrations:

- EUTM registration number 016294993 for a figurative mark FORZA FIGHTING GEAR, comprising the stylized name FORZA against a “spark” design and the words FIGHTING GEAR in smaller stylized text below. The mark was registered on May 12, 2017 for numerous categories of sporting goods, sportswear and accessories in International Classes 9, 25 and 28. The registration is subject to pending proceedings for cancellation brought by the Complainant in the EUIPO.
- EUTM registration number 017439761 for a figurative mark FORZA SPORTSWEAR, in a similar format to the figurative mark referred to above. The mark was registered on February 16, 2018 for numerous categories of sporting goods, sportswear and footwear, accessories and services, including organizing competitions, in International Classes 9, 18, 25, 28, and 41. The registration is subject to pending proceedings for cancellation brought by the Complainant in the EUIPO.

The disputed domain name <forzaworld.com> was registered on May 30, 2012. The disputed domain name <forzacyprus.com> was registered on July 21, 2014. The disputed domain names <forzabulgaria.com>, <forzaengland.com>, <forzafrance.com>, <forzagermany.com>, <forzagreece.com>, <forzaholland.com>, <forzapoland.com>, <forzarussia.com> and <forzaspain.com> were registered in November or December 2016. The disputed domain names <forzaeu.com>, <forza-eu.com> and <forzanetherlands.com> were registered on January 30, 2017. Of the remaining disputed domain names, 22 were registered on October 13, 2017, and the remainder between May 8, 2018, and June 27, 2022.

The Complainant provides evidence that all of the disputed domain names, with the exception of <forzayourchoice.com>, have redirected to a website at “www.forzaworld.com”. The website displayed the Respondent’s stylized text FORZA as appears in its two figurative trademarks referred to above, although without the terms FIGHTING GEAR or SPORTSWEAR in smaller stylized type. It also included the strapline “Forza – Your Choice”. The website appeared to offer sportswear for sale online.

The disputed domain name <forzayourchoice.com> also displayed the Respondent’s stylized text FORZA as appears in its two figurative trademarks referred to above, although without the terms FIGHTING GEAR or SPORTSWEAR in smaller stylized type. It appeared to offer fashion (as opposed to sports) clothing for sale online.

6. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain names are confusingly similar to its FORZA trademark. It contends that all of the disputed domain names incorporate the FORZA mark, but without any distinguishing features, since the remainder of each disputed domain name is merely descriptive, comprising geographical names or references to sports or clothing.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Complainant submits that both of the Respondent’s trademark registrations are subject to cancellation proceedings. It also relies on a judgment of the Danish Maritime and Commercial High Court, dated January 25, 2023, which includes an injunction prohibiting the Respondent from using the terms “forza”, “forza fighting gear”, and “forza sportswear” in connection with the provision of various items of sportswear and certain other sporting-related goods and services in Denmark.

The Complainant contends that it holds “the undisputed trade mark rights to ‘FORZA’ in the EU as well as many other prominent jurisdictions and has done so for multiple decades”.

The Complainant "... kindly asks the panel to consider that the trade mark registrations of the Respondent are invalid."

The Complainant further submits that the Respondent registered its trademarks for the sole purpose of preventing the Complainant from exercising its rights or to circumvent the application of the UDRP.

The Complainant submits that the Respondent cannot have any rights or legitimate interests in any of the disputed domain names in circumstances where a Court of competent jurisdiction in the EU has ruled that it must cease to use the FORZA mark for sportswear and similar goods, owing to the risk of confusion with the Complainant's products.

The Complainant further submits that the term "forza" has "no linguistic meaning that would warrant its usage for other purposes than as a brand" or deliberately to mislead consumers by causing confusion with the Complainant's trademark.

The Complainant submits that the disputed domain names were registered and are being used in bad faith.

The Complainant states that the first of the disputed domain names was registered in May 2012, while the Respondent's trademark applications were not filed until 2017. It contends that the Complainant is a prominent business within the sportswear industry, that FORZA is one of the world's most popular badminton brands and that it has trademark rights for the mark FORZA going back to 1996. The Complainant states that the Respondent knew, or should have known, of the Complainant's FORZA trademark at the date of registering the disputed domain names owing to popularity of the Complainant's decades-old brand and the fact that both parties operate in the same markets. The Complainant submits that, if the Respondent did not know of its FORZA trademark, then it displayed "willful blindness" by deliberately failing to screen for any relevant prior trademarks.

The Complainant further submits that "... the Respondent's continued use of the domain names is not in good faith based on the court ruling which required the cessation of the Respondent's use of 'FORZA' for sportswear and similar goods."

The Complainant submits that the Respondent's website at "www.forzaworld.com" offers sports clothes and accessories, and does so by reference to a logo comprising a graphical representation of the name "FORZA". It submits that the website at "www.forzayourchoice.com" appears to be under construction but that is, or will be, possible to purchase clothing items on that website for delivery to Denmark.

The Complainant contends that the commercial risk of confusion is evident in these circumstances and that the Respondent registered the disputed domain names intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks.

The Complainant further submits that the Respondent registered the disputed domain names (with the exception of <forzaworld.com>) for the purpose of preventing the Complainant from reflecting its mark in corresponding domain names.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

The Respondent points out that there are pending actions in the High Court of Denmark, the EUIPO and the UK IPO concerning the parties' respective trademark rights, including mutual cancellation actions. It states that some of these proceedings are suspended and that none have been completed.

The Respondent also submits that the Complainant has obtained an interim injunction in Denmark, which is subject to a full determination of the merits of the case at a future hearing. The Respondent states that it has

also appealed against the grant of the interim injunction and that judgment on that appeal is due on July 10, 2023.

The Respondent submits that the Parties entered into a co-existence agreement which resulted from the Complainant's opposition to the Respondent's application for its EUTM FORZA SPORTSWEAR. The Respondent exhibits a list of goods and services with a number of items highlighted, which it says are the items notified to it by the Complainant for removal from its application. Those items include, in particular, items related to tennis, badminton and squash as well as certain other products. The Respondent also exhibits email exchanges with the Complainant's representative, dated February 2018, which appear to confirm that the Complainant will not file an opposition to the FORZA SPORTSWEAR mark in view of the agreed deletions. The Respondent submits that this agreement between the Parties also extended to the Respondent's application for its FORZA FIGHTING GEAR trademark, which had in fact been filed before the FORZA SPORTSWEAR application.

The Respondent acknowledges that, in connection with the Complainant's application for a preliminary injunction, the Danish High Court did not accept that a binding co-existence agreement had been entered into. It contends that the Court wrongly decided that the territorial scope of any agreement was unclear and states that it has appealed accordingly.

The Respondent contends in the circumstances that the dispute between the Parties involves a complex trademark dispute which should be decided on its merits by a civil court and is not suitable for determination under the UDRP.

The Respondent submits, in particular, that the question of confusing similarity is complex and requires evidence as to whether or not confusion is likely. It states that the Complainant clearly does not have "absolute" rights in the mark FORZA and contends that that name is used by a wide array of domain name registrants and trademark owners as part of normal business practice (however, examples are not provided).

The Respondent submits that it has rights or legitimate interests in respect of the disputed domain names because the Complainant consented to its EUTM applications in the circumstances set out above. It contends that it has rights or legitimate interests in any event by virtue of its trademark registrations, albeit that those registrations (and the Complainant's) are subject to pending cancellation proceedings. The Respondent submits that it is making legitimate use of the disputed domain names to market its own products.

The Respondent denies having registered the disputed domain names in bad faith. It states that the Complainant was aware of the trademark application for FORZA FIGHTING GEAR from February 2017 (when published by the EUIPO) and that the majority of the disputed domain names were registered in or after 2017. The Respondent states that it in fact purchased the disputed domain name <forzaworld.com> in 2022.

The Respondent submits that it has operated a business in Cyprus selling sporting wear and sporting gear since 2014 or 2015. It states that it registered the domain name <forzacyprus.com> in July 2014. It states that it had never heard of the Complainant's brand until the Complainant's contacted it in or around November 2017 in connection with its EUTM application. The Respondent denies that the Complainant's FORZA brand was widely known at that time and contends that it would mainly have been recognised by badminton players. It repeats that it agreed with the Complainant that it would not sell badminton- or tennis-related products and that the Complainant cannot claim a monopoly over all other uses of the mark FORZA.

The Respondent denies having used the disputed domain names in bad faith. It states that it has used them for its own legitimate business purposes and that none of the disputed domain names was registered for the purpose of preventing the Complainant from reflecting its FORZA trademarks in domain names, or of diverting Internet traffic from the Complainant to the Respondent's websites.

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 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 established that it is the owner of registered trademark rights for the mark FORZA. All of the disputed domain names incorporate the mark FORZA in full, together with geographical, dictionary or descriptive terms or abbreviations, none of which prevent the trademark from being recognizable with the relevant disputed domain name. The Panel therefore finds that all of the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent has established that it is the owner of European Union Trade Mark registrations for the marks FORZA FIGHTING GEAR and FORZA SPORTSWEAR, registered in 2017 and 2018 respectively. While those trademarks are subject to pending cancellation actions, they remain on the register and therefore, in the view of the Panel, provide the Respondent with rights or legitimate interests in the disputed domain names for the purposes of this proceeding.

The Complainant submits that the Respondent's trademarks were registered primarily for the purpose of preventing the Complainant exercising its rights or to circumvent the application of the UDRP. While a panel may disregard trademark registrations which were made deliberately for the purpose of circumventing a relevant domain name dispute policy (see *e.g.* section 2.12.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#))), the Panel finds no evidence in this case, nor grounds to infer, that the Respondent registered the disputed domain names for that purpose.

The Complainant further "... kindly asks the panel to consider that the trade mark registrations of the Respondent are invalid." Any such submission is clearly inappropriate in circumstances where cancellation proceedings are currently pending in the EUIPO (and the matter subject to litigation in the Danish High Court).

Nor is the Complainant assisted by having obtained an interim injunction in Denmark which prohibits the Respondent from using the mark FORZA for certain categories of goods and services in Denmark. First, that injunction is temporary in nature and subject to a full hearing of the merits of the case in due course. Secondly, the preliminary injunction is subject to appeal (while the Panel does not know the outcome of the appeal hearing at the time of writing this Decision, the outcome would not affect the Decision in any event). Thirdly, the injunction is limited to the acts stated to be prohibited in Denmark and does not extend to other uses that the Respondent is making of the disputed domain names. If the Complainant believes that the use of the disputed domain names in Denmark represents a breach of the injunction, then it can no doubt apply to the Danish court for the appropriate remedies; however, the existence of the injunction does not of itself establish grounds for depriving the Respondent of the disputed domain names.

Furthermore, the question of whether the Respondent has been making legitimate commercial use of the disputed domain names is, as the Respondent rightly points out, the subject of a complex legal dispute in other forums, including the Danish High Court, the EUIPO and the UK IPO. The determination of that question requires a detailed factual enquiry into matters such as whether a co-existence agreement was or

was not concluded between the parties, and if so on what terms, which are matters significantly beyond the scope of the UDRP, which is designed principally to address cases of “cybersquatting”.

In the light of the above matters, in the view of the Panel, the Complainant cannot establish for the purpose of this proceeding that the Respondent has no rights or legitimate interests in respect of the disputed domain names. Therefore, the Complaint must necessarily fail.

C. Registered and Used in Bad Faith

While the findings recorded above are sufficient to dispose of the Complaint, the Panel will nevertheless comment briefly on the issue of bad faith.

In order to succeed on the third element under paragraph 4(a) of the Policy, the Complainant must establish that the disputed domain names were both registered and have been used in bad faith.

To demonstrate registration in bad faith, the Complainant must show that the Respondent knew of the Complainant’s trademark when it registered the disputed domain names and did so in order to take unfair advantage of the Complainant’s commercial goodwill attaching to that trademark.

The Respondent submits that it started using the FORZA name in Cyprus in about 2014 in connection with a sports equipment business and was not at that time aware of the Complainant’s trademark. It also contends that it entered into a co-existence agreement with the Complainant in early 2018 and that the disputed domain names registered after that date were in accordance with that agreement.

As to the one disputed domain name registered prior to 2014, <forzaworld.com>, which was first registered in 2012, the Respondent states that it acquired this disputed domain name only in 2022 and the Panel has independently confirmed (from a review at “www.web.archive.org”) that this appears to be the case.

While the Complainant submits that it has “undisputed trade mark rights” to the FORZA name in the European Union and elsewhere, the Panel does not accept that any such rights are all-encompassing. Based on the Panel’s own limited research, the word “forza” means “force” in Italian (and it is not therefore correct that it has “no linguistic meaning...” as the Complainant suggests). Indeed, it is perhaps unsurprising that the term should be chosen in connection with sporting goods or services. The Panel also finds on the basis of a Google search against the term “forza” that the term is widely used in commerce by numerous parties having no connection with the Complainant.

In the circumstances, the Panel finds the Respondent’s submissions to be credible and considers it more likely, on balance, that the Respondent registered the disputed domain names in furtherance of its own sportswear business, and following from what it believed to be a co-existence agreement, than unfairly to target the Complainant’s trademark rights.

Similarly, the Panel does not accept the Complainant’s contentions that the Respondent registered the disputed domain names primarily to divert business away from the Complainant by causing confusion with its FORZA trademark or to prevent it from registering domain names of its own.

As to the Complainant’s contention that “... the Respondent’s continued use of the domain names is not in good faith based on the court ruling which required the cessation of the Respondent’s use of ‘FORZA’ for sportswear and similar goods,” the Panel reiterates its view that neither the grant nor any alleged breach of the preliminary injunction in Denmark is conclusive of the matters required to be established for a transfer of the disputed domain names to be ordered under the Policy.

The Complainant has therefore failed to establish to the satisfaction of the Panel that the disputed domain names were registered and have been used in bad faith.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 11, 2023