

ADMINISTRATIVE PANEL DECISION

1st Franklin Financial Corporation v. Robert Elderkin / Internet Business Services, LLC

Case No. D2023-2234

1. The Parties

The Complainant is 1st Franklin Financial Corporation, United States of America (“United States”), represented by Troutman Pepper, United States.

The Respondent is Robert Elderkin, Internet Business Services, LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <1stfranklinfunding.com> is registered with OnlineNic, Inc. d/b/a China-Channel.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 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.

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 of the Complaint, and the proceedings commenced on May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on June 27, 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 privately held financial services company, established in 1941 and incorporated under the laws of the State of Georgia in 1946. The Complainant is headquartered in Toccoa, Georgia, United States. The Complainant offers personal and business loans, retail sales financing, and investment products, with more than 340 branch offices across the Southeast United States and online services provided through its website at “www.1ffc.com”.

Initially incorporated as the “Franklin Discount Company”, the Complainant changed its name to “1st Franklin Financial Corporation” in 1983. In connection with its name change, the Complainant adopted a logo consisting of a portrait of Benjamin Franklin superimposed over a numeral one followed by the abbreviation “st” for “first” (the Complainant’s “Franklin 1st design logo”) and obtained United States trademark registration for the logo in 1985. In 2021, the Complainant trademarked an updated version of the logo (the “Franklin 1 design logo”), streamlining the design and dropping the letters “st” as part of the registered mark. This newer version now appears on the Complainant’s website, followed by the letters “st” and “Franklin Financial” as follows:



The Complaint attaches numerous articles dating from 1993 through 2016 from newspapers in cities where the Complainant operates, as well as from industry media such as *American Banker*, referring to the Complainant as “1st Franklin” or the equivalent “First Franklin”, often adding the word “Financial”. The Complainant applied to the United States Patent and Trademark Office (“USPTO”) to register 1ST FRANKLIN FINANCIAL as a word mark on January 22, 2021, claiming first use in commerce in 1983.

The Complainant currently holds the following United States trademark registrations:

MARK	REGISTRATION NUMBER	REGISTRATION DATE
Franklin 1 st Design Logo (design)	1357167	August 27, 1985
Franklin 1 Design Logo (design)	6580968	December 7, 2021
1ST FRANKLIN FINANCIAL (standard characters)	6792087	July 19, 2022

The Registrar reports that the disputed domain name was created on February 21, 2021 and registered to the Respondent Robert Elderkin, listing his organization as Internet Business Services, LLC with a postal address in Osage Beach, Missouri, United States and a contact email address in the domain <internetbusinessservices.net>.

At the time of this Decision, the disputed domain name does not resolve to an active website. The Panel notes that the Internet Archive Wayback Machine has a screen capture dated November 24, 2021, showing that on that date the disputed domain name redirected to “www.firstfranklinfunding.com” (the “Respondent’s former website”), headed with the following logo:



The Respondent's former website advertised business and personal lending and investment services and displayed the same contact email address given in the registration details for the disputed domain name, along with a toll-free telephone number. The Respondent's former website claimed "76 years of experience" (which implied a founding date about the same time as the Complainant's) and featured an "About Us" page with extremely high reviews (unattributed) for "accountability", "honesty", "respect", and "performance" but no actual information about the company supposedly offering the services and operating the website. The "Our Team" page featured only first names and stock photos of "Our Awesome Team". The website encouraged visitors to use the contact page to furnish their names, email addresses, and telephone numbers to "request a free consultation".

The Complaint attaches emails from 2022 showing that the disputed domain name was used to contact several of the Complainant's customers on behalf of "1st Franklin Funding", offering "new options" for "priority funding". Some of the unsolicited emails included a footer featuring a portrait of Benjamin Franklin and the Complainant's toll-free telephone number. The emails encouraged replies. The Complainant became aware of these deceptive emails because customers questioned the Complainant about them. Customers also reported receiving "follow-up" telephone calls and text messages, some of which are included with the Complaint.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to its 1ST FRANKLIN FINANCIAL mark. The Complainant denies any association with the Respondent and observes that the Respondent does not appear to be a licensed lender and has used the disputed domain name only to impersonate the Complainant and deceive its customers, which is not a legitimate interest and represents bad faith. The Complainant argues that "there is no plausible circumstance under which Respondent could legitimately register or use the disputed domain name and that, therefore, the disputed domain name was registered by the Respondent in bad faith."

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used 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

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed

domain name”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant holds 1ST FRANKLIN FINANCIAL as a registered standard character mark. “1ST FRANKLIN” is the distinctive element, “financial” being a generic term for which exclusive rights are disclaimed in the trademark registration. The disputed domain name repeats this distinctive element and adds the dictionary word “funding”, which does not avoid confusing similarity. See *id.*, section 1.8. The trademark is recognizable in the disputed domain name. As usual, the addition of the Top-Level Domain “.com” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel concludes, therefore, that the Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has relevant trademark rights and denies any association with the Respondent. There is no evidence that the Respondent is a legal entity with a corresponding name. It appears on this record that the Respondent has used the disputed domain name only for phishing emails and a deceptive website soliciting personal information and apparently unlicensed and likely fraudulent financial service offerings. Thus, the Complainant has made a *prima facie* case, and the Respondent’s activities cannot be considered uses in connection with a *bona fide* offering of goods or services. The Respondent has not come forward with evidence of any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following:

- (iv) by using the domain name, you [respondent] have intentionally attempted to attract, for commercial gain, Internet users to your [respondent’s] web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your [respondent’s] website or location or of a product or service on your website or location.”

These examples are not exclusive, and panels have found bad faith in cases where domain names were used for abusive or illicit purposes, with or without associated websites, for example for deceptive or

phishing emails, identity theft, or malware distribution. See [WIPO Overview 3.0](#), section 3.4. In some of these cases, an imitative website or emails linking the Complainant's own website or displaying some of the Complainant's genuine contact details were used to lend credence to deceptive communications, as was the case here with emails directed to certain customers of the Complainant.

The facts in this proceeding demonstrate that the Respondent was aware of the Complainant and sought to imitate the Complainant in the Respondent's former website and in emails with a similar domain name, logo, service offerings, and in some cases displaying the Complainant's toll-free telephone number, seeking personal information and contacts with the Complainant's existing and prospective customers. This reflects bad faith misdirection for commercial gain as contemplated by the Policy, paragraph 4(b)(iv) and also bad faith beyond the enumerated examples in paragraph 4(b).

The Panel concludes, therefore, that the Complainant has established the third element 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 <1stfranklinfunding.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: July 11, 2023