

## **ADMINISTRATIVE PANEL DECISION**

### **Formula One Licensing BV v. Ano Niem**

### **Case No. D2023-2237**

#### **1. The Parties**

The Complainant is Formula One Licensing BV, Netherlands, represented by Sheridans Solicitors, United Kingdom.

The Respondent is Ano Niem, Netherlands.

#### **2. The Domain Name(s) and Registrar(s)**

The disputed domain name <f1passes.com> (the “Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 26, 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 30, 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 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 Willem J. H. Leppink as the sole panelist in this matter on June 26, 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 following facts are undisputed.

The Complainant belongs to a group of companies that organizes Formula One Championship races, as well as other motorsports events. As such, the Complainant is the worldwide proprietor of the group's trademark portfolio relating to Formula One Championship races. The races itself are being held roughly twenty three times a year attracting an annual audience of 4.2 million people on average. The races are also broadcasted on the television accounting for another 425 to 600 million viewers in 189 different countries worldwide.

The Complainant is the owner of many trademark registrations worldwide comprising of the word element F1, including, but not limited to, the Benelux trademark registration for F1 (word mark), with registration no. 1008618 and with a registration date of January 30, 2017, for goods and services in classes 4, 9, 12, 14, 16, 18, 25, 28, 32, 33, 35, 36, 38, 39, and 41, and the European Union trademark registration for F1 (word mark), with registration no. 009250721 and with a registration date of October 28, 2012, for goods and services in classes 9, 14, 16, 18, 25, 39, 41, 42, and 43 (together in singular also referred to as the "F1 Trademark").

The Domain Name was registered on January 21, 2023. The website to which the Domain Name resolves (the "Website"), purportedly offers different tickets for the F1 Monaco Grand Prix for sale, whilst using and referring to the F1 Trademark, as well as F1 the logo owned by the Complainant.

#### **5. Parties' Contentions**

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

Insofar as relevant for deciding this matter, the Complainant contends the following.

The Domain Name is identical or confusingly similar to the F1 Trademark. More specifically, the Domain Name consists of the F1 Trademark in its entirety, followed by the generic term "passes", which relates to goods or services provided under the F1 Trademark. As such, the F1 Trademark can be distinguished as the dominant element of the Domain Name.

Moreover, the Respondent has no rights nor legitimate interests in the Domain Name, whereas the Complainant has not authorized, licensed or otherwise permitted the Respondent to use the F1 Trademark or to register a domain name incorporating the F1 Trademark. Furthermore, there is no legitimate noncommercial or fair use of the Domain Name as the Domain Name resolves to a Website that purports to offer tickets to the Complainant's race called F1 Monaco Grand Prix.

In addition to this, the Respondent has registered and uses the Domain Name in bad faith. The Respondent chose to register the Domain Name that copies the well-known F1 Trademark of the Complainant in order to take predatory advantage of the Complainant's reputation. Subsequently, the Respondent is intentionally using the Domain Name to attract Internet users by creating a likelihood of confusion with the F1 Trademark as to the source, affiliation or endorsement of the Website by the Complainant. It even seems like the Registrant is trying to impersonate the Complainant as the Website clearly displays the Complainant's trademarks, logo's, fonts and typefaces. In addition to this, the Complainant has received multiple complaints from Internet users who ordered tickets for F1 Monaco Grand Prix through the Website but never actually received the tickets. Moreover, the payment is handled via WhatsApp, which leads to the impression that the Domain Name is being used for fraudulent purposes.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (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.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

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

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the F1 Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the F1 Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the F1 Trademark. The Domain Name <f1passes.com> is comprised of the F1 Trademark in its entirety and the term "passes".

The F1 Trademark is clearly recognizable in the Domain Name and as set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element.

Therefore, the Panel is satisfied that the first element of the Policy is met.

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

The Complainant in its Complaint and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

The Panel could not find any evidence by referring to the types of evidence set forth in paragraph 4(c) of the

Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods and services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark or service mark at issue.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent in order to demonstrate that it has rights or legitimate interests in the Domain Name. However, the Respondent has not presented evidence of any such rights or legitimate interests it may have in regard to the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

In more detail, the Complainant has asserted that the Respondent cannot be commonly known by the Domain Name. In addition to this, there is no evidence that the Respondent is, or has ever been, a licensee of the Complainant or has ever been authorized by the Complainant to register or use the F1 Trademark, or to apply for or use any domain name incorporating the F1 Trademark in which the Complainant has longstanding rights.

The Panel finds that the Website creates the impression of being an official website affiliated to the Complainant. The Website can even be regarded as an impersonation of the Complainant. In accordance with [WIPO Overview 3.0](#), section 2.5.1, the use of the Domain Name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Even if the Respondent actually offers and sells tickets for the F1 Monaco Grand Prix, and the Respondent considered itself to be a reseller or distributor of the Complainant's products, the Respondent has not satisfied all of the requirements set forth in the so-called "Oki Data test", as the Website does not accurately and prominently disclose the Respondent's relationship with the Complainant.

However, the Complainant put forward evidence of three different complaints from Internet users who ordered tickets for the F1 Monaco Grand Prix through the Website but never actually received the tickets. Lacking a response, the Panel considers that it is more likely than not that the Website is being used for fraudulent activities. The Panel takes into consideration these complaints as well as the fact that the Respondent – when the privacy shield was lifted – turned out to be Ano Niem (which for a Dutch person would translate to "Ano Nymous"). The Respondent furthermore has provided as address the address of a well-known Amsterdam hotel. Finally, the invitation to Internet users to pay for their tickets via WhatsApp, confirms this assessment.

In accordance with section 2.13.1 of the [WIPO Overview 3.0](#), the use of a domain name for illegitimate activity, such as fraud or the impersonation of a complainant, can never confer rights or legitimate interests on a respondent.

Hence, the Respondent's use cannot be considered a legitimate noncommercial or fair use of the Domain Name either.

The Panel, therefore, finds that the second element has been satisfied.

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

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the F1 Trademark and the Complainant's activities are well-known, if not famous, also in the country where the Respondent purports to be located. The Complainant is owner of numerous trademarks which were used and registered many years before the Domain Name was registered.

Accordingly, in the Panel's view, it is beyond any doubt that the Respondent clearly had the Complainant in mind when registering and using the Domain Name as the Website offers for sale tickets for F1 Monaco Grand Prix, an event organized by the Complainant. In addition to this, the Website displays the Complainant's trademarks and logos multiple times and even uses the same fonts and typefaces as the Complainant.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the products that are being offered for sale on the Website.

The fact that the Complainant received three different complaints from Internet users who did not receive the tickets they ordered through the Website, provides strong evidence that the Domain Name is being used for fraudulent activities. Further adding to the fraudulent character of the Domain Name is the fact that the order as well as the payment is done via WhatsApp from a Dutch phone number using a F1 logo as its profile picture. Considering the fact that fraud is considered a *per se* illegitimate activity such behavior is, in accordance with section 3.1.4 of the [WIPO Overview 3.0](#), manifestly considered evidence of bad faith.

A finding of registration and use in bad faith is also supported by the fact that it is beyond reasonable doubt that the Respondent used a false name and address when registering the Domain Name.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met and that the Domain Name has been registered and used in bad faith.

## **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 Domain Name <f1passes.com> be transferred to the Complainant.

*/Willem J.H. Leppink/*  
**Willem J. H. Leppink**  
Sole Panelist  
Date: July 10, 2023