

## **ADMINISTRATIVE PANEL DECISION**

Fairmarkets Trading PTY LTD v. Jack David  
Case No. D2023-2402

### **1. The Parties**

The Complainant is Fairmarkets Trading PTY LTD, Australia, internally represented.

The Respondent is Jack David, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <fairmarkets.trade> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 5, 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 2023, providing the registrant and contact information behind the privacy service disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 6, 2023.

The Center verified that the Complaint together with the amendment to 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on July 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 to ensure compliance with the Rules, paragraph 7.

The Panel issued on July 28, 2023, a procedural order requesting supplemental evidence. The Complainant replied on August 1, 2023, with screenshots documenting the Respondent has – on the website to which the Domain Name resolves - copied text and pictures from the Complainant's website. The Respondent did not submit any reply to the procedural order.

#### **4. Factual Background**

The Complainant is an Australian-based forex and CFD broker that offers trading across a variety of markets including commodities, indices and cryptocurrencies.

The Complainant has registered a trademark with the term FAIR MARKETS included, see Australian trademark registration number 2188017 registered on June 21, 2021. It also has registered the domain name <fair.markets> since 2018.

The Domain Name appears to be registered on February 22, 2023. The Domain Name has resolved to a website purporting to be run by the Complainant.

On July 28, 2023, the Panel issued an Administrative Panel Order inviting the Complainant to address the basis for his request, and making provision for a response by the Respondent. The Parties were given until August 2 and 7, respectively, to respond. The Complainant filed supplemental filings on August 10, 2023. The Respondent did not submit further information.

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

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

The Complainant provides evidence of trademark registration and argues that the Domain Name is identical/confusingly similar to the Complainant's domain name/trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has set up a website cloning the Complainant's website without any authorization from the Complainant.

The Complainant argues that they have received complaints from the public who have been the victim of a scam at the Respondent's website. This has caused reputational detriment to the Complainant. The Complainant argues that the Respondent has acted in bad faith and, therefore, the Domain Name should be cancelled. To the Complainant it is evident that the Respondent has made the cloned website in bad faith, aiming at financial gain by using the Complainant's trademark and other content owned by the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has trademark rights. The Domain Name incorporates the

Complainant's trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of 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. The Respondent's use of the Domain Name is evidence of bad faith, see below.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

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

The composition and use of the Domain Name make it clear that the Respondent was aware of the Complainant and its prior rights when the Respondent registered the Domain Name. The Respondent has failed to provide any evidence of actual or contemplated good-faith use of the Domain Name. The Respondent's use of the Domain Name to defraud Internet users is evidence of bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. The third element of the Policy has been established.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name <fairmarkets.trade> be cancelled.

/Mathias Lilleengen/

**Mathias Lilleengen**

Sole Panelist

Date: August 14, 2023