

ADMINISTRATIVE PANEL DECISION

Finecobank S.p.A. v. Ritesh Kashyap / Prabhu kumar
Case No. D2023-3441

1. The Parties

The Complainant is Finecobank S.p.A., Italy, represented by Studio Barbero, Italy.

The Respondents are Ritesh Kashyap and Prabhu Kumar, India.

2. The Domain Names and Registrars

The disputed domain name <finecofx.com> is registered with NameCheap, Inc.
The disputed domain name <finecofx.org> is registered with OwnRegistrar, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On August 14, 2023, the Center transmitted by email to NameCheap Inc. a request for registrar verification in connection with the disputed domain name <finecofx.com>. On August 14, 2023, NameCheap Inc. 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 (REDACTED FOR PRIVACY, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

On August 14, 2023, the Center transmitted by email to OwnRegistrar, Inc. a request for registrar verification in connection with the disputed domain name <finecofx.org>. On August 14, 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 (WhoisSecure) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 15, 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 amendment to the Complaint on August 16, 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 August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. The Respondent, Prabhu Kumar, sent an informal email to the Center on August 28, 2023.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on September 28, 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, FINECOBANK S.p.A. (hereinafter, "Complainant" or "Fineco"), is an Italian direct and multichannel bank providing banking, credit, trading, and investment services.

The Complainant owns several trademarks with the element FINECO, for example:

- International Trademark Registration No. 760491 for FINECO, registered on December 12, 2000, in classes 35, 36 and 42;
- International Trademark Registration No. 1332823 for FINECO BANK & design, registered on April 29, 2016, in classes 09, 36 and 38, designating the United States of America, besides other jurisdictions;
- International Trademark Registration No. 1720053 for FINECO X & design, registered on November 25, 2022, in classes 09, 35 and 36.

The Complainant is also the owner of the domain name <finecobank.com>, registered on June 17, 2006.

The disputed domain names <finecofx.com> and <finecofx.org> were registered on June 22, 2023 and August 2, 2023, respectively. Before filing the Complaint, the disputed domain names resolved to websites impersonating the Complainant, publishing the Complainant's trademarks, and promoting banking, trading, and investment services, without displaying any disclaimer of non-affiliation with the Complainant. At the time the Complaint was filed, both disputed domain names resolved to inactive webpages.

5. Parties' Contentions

A. Complainant

The Complainant argues that its trademark FINECO appears in its entirety in the disputed domain name. As a result, the disputed domain names are to be considered identical to the Complainant's trademarks and domain name.

The Complainant also alleges that the addition of the element "fx" does not prevent the finding of confusion and similarity with its trademarks and domain name.

The disputed domain names resolved to websites impersonating the Complainant and promoting banking, trading and investment services. The disputed domain names currently resolve to inactive webpages, as they have been suspended as a result of the activities pursued by the Complainant.

Therefore, there is no evidence that the Respondents have made demonstrable preparations to use the disputed domain names for legitimate purposes, nor is there any evidence that the Respondents are using the disputed domain names in connection with a *bona fide* offering of goods and services.

The Complainant argues that the Respondents have no rights or legitimate interests in respect of the disputed domain names. That being the case, the Complainant finds that the disputed domain names were used to take unfair advantage of the Complainant's rights for commercial gain, since Internet users and the Complainant's clients would inevitably associate the content of the disputed domain names with the Complainant's prior trademarks and domain name.

Moreover, the Complainant stresses that the Respondents are not commonly known by the mark FINECO.

According to the Complainant, it has prior rights over the trademark FINECO, and has not authorized the registration and use of the disputed domain names, nor the use of its trade name and trademarks by the Respondents.

The Respondents are not affiliated to or authorized by the Complainant to use or register the disputed domain names.

The Complainant's intellectual property rights for FINECO-formative trademarks predate the registration of the disputed domain names.

The Complainant also argues that the Respondents were aware of the Complainant's rights and have clearly registered the disputed domain names to target the Complainant's trademark, and that the registration of the disputed domain names were conducted in bad faith.

Finally, the Complainant requests the transfer of the disputed domain names.

B. Respondent

On August 28, 2023, the Respondent Prabhu Kumar, from India, sent an e-mail to the Center with the following content:

"Hello, I am a reseller of domains and hosting services. Since I am located in India, I had no idea that the domains are trademarks of "finecobank". I have already contacted my domain registrar "Namecheap" and asked them to remove it from my account. If possible, the registrars can transfer the domain to the account of "finecobank"."

The above message was the only reply to the Complaint.

6. Consolidation of Multiple Respondents

As stated in paragraph 3(c) of the Rules "The Complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder." When there are multiple underlying respondents, the Complaint needs to make a consolidation argument establishing respondent identity or common control amongst the domain name registrations. It is up the panel to make a final determination.

In the case at hand, the Complainant requests consolidation asserting that the different registrants were alter egos of the same beneficial holder, there were substantial commonalities in the websites to which the disputed domain names resolve and the use of the same domain name servers, the disputed domain names incorporated the Complainant's trademark in its entirety together with a descriptive or geographical term, the registration period was within a two month period, and both underlying registrants are located in India and use Gmail email addresses.

Based on the above factors, the Panel finds that there is enough evidence to support a finding of common control amongst the domain name registrations. Therefore, the Panel allows the requested consolidation.

7. Discussion and Findings

As per paragraph 4(a) of the Policy, the Complainant must prove that:

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

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The evidence demonstrates that the Complainant is the owner of several trademark registrations and domain name with the element FINECO.

The disputed domain names incorporate the Complainant's trademark FINECO in its entirety, with the addition of the term "fx." The addition of this term does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark, since FINECO remains recognizable in the disputed domain names. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

As numerous prior UDRP panels have recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See section 1.7 of the [WIPO Overview 3.0](#).

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain names are identical or confusingly similar to the Complainant's trademark FINECO.

B. Rights or Legitimate Interests

There is no evidence that the Respondents have any authorization to use the Complainant's trademarks or to register domain names containing the Complainant's trademark FINECO.

There is no evidence that the Respondents are commonly known by the disputed domain names.

Furthermore, the Complainant has submitted that the disputed domain names were used in connection with a fraudulent practice leading the users into believing that the Complainant is behind it. Such use can never confer rights or legitimate interests onto the Respondents. See section 2.13 of the [WIPO Overview 3.0](#).

For the above reasons, the Panel finds that the Complainant has made out an un rebutted *prima facie* case and the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondents have no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

The Respondent Prabhu Kumar sent an email to the Center stating that it has no further interest in the disputed domain names and that it was not aware of trademark rights over the mark FINECO by the Complainant.

The Panel notes though, that the trademark FINECO is registered by the Complainant in many jurisdictions and has been used for years. The Complainant's trademarks predate the registration of the disputed domain names. The disputed domain names reproduce the Complainant's FINECO trademark in its entirety together with "fx."

The disputed domain names reproduce the Complainant's trademark FINECO, and the Respondents have no rights or legitimate interests in the disputed domain names. Nor have the Respondents explained why these domain names were registered by them.

It has been established in prior UDRP decisions that when a respondent knew or should have known a trademark prior to registering a disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

The Complainant demonstrates that there is no other reason for the use and registration of the disputed domain names than to take advantage of the reputation of the Complainant's trademarks, with the intent to deceive Internet users into believing that the disputed domain names are associated with the Complainant.

The Panel finds that the Respondents obviously were aware of the Complainant's marks when registering the disputed domain names, since the Respondents tried to impersonate the Complainant's trademark and online banking services, in a clear reference to the Complainant's banking business.

Therefore, this Panel finds that the disputed domain names were inherently likely to mislead Internet users, and the Respondents' use of the disputed domain names in this manner indicates neither a *bona fide* offering of goods or services under Policy, nor a noncommercial or fair use of the domain names under Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain names have 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 disputed domain names, <finecofx.com> and <finecofx.org> be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: October 12, 2023