

ADMINISTRATIVE PANEL DECISION

Phoenix Life Limited v. james ndota
Case No. D2023-3521

1. The Parties

The Complainant is Phoenix Life Limited, United Kingdom, represented by Pinsent Masons LLP, United Kingdom.

The Respondent is james ndota, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <phoenixverseltd.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 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 August 25, 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 August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. On August 30, 2023, the Center received an informal email communication from a third party. The Respondent did not submit any response. On September 21, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on October 2, 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 part of the Phoenix Group, a well-known British conglomerate that offers insurance services and retirement investments, which was established more than 100 years ago.

The Complainant is the owner of numerous trademark registrations for PHOENIX, such as the United Kingdom registration no. UK00001306768, registered on April 9, 1987.

The Respondent registered the disputed domain name on July 6, 2023.

The Panel accessed the disputed domain name on October 7, 2023, and it was linked to a website entitled “PhoenixVerse”, where the Respondent promotes cryptocurrency trading services and tools, claiming to be part of the Phoenix Group.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name wholly incorporates the PHOENIX trademark, with the minor addition of the word “verse” and the letters “ltd” at the end. Therefore, the disputed domain name is phonetically and visually confusingly similar with the Complainant’s marks. The Complainant believes that the word “verse” has been used in the disputed domain name in order to exacerbate its association with the Complainant’s marks which often contain words such as “unit trust managers”, “wealth”, “wealth assurance” or “advisers” (*i.e.*, words which are closely related with financial matters) in addition to the trademark PHOENIX. An average consumer is likely to associate the word “verse” with the metaverse and therefore also with cryptocurrencies and non-fungible tokens (also finance-related) which in the recent years have become extremely popular with investors and which are the only means of transacting in the metaverse. The Complainant fears that Internet users are likely to assume that the Complainant is now also offering investments in cryptocurrency and non-fungible tokens which of course is not true but which, given their current popularity, would not be an improbable assumption. The letters “ltd” used in the disputed domain name are purely generic and are often included in company names as the abbreviation for the word “limited” and therefore would not be regarded in a trademark sense. Further, even though the domain name suffixes do not interfere with the finding of confusing similarity between two marks (as they will be disregarded by Internet users) the disputed domain name also incorporates the “.com” suffix just like some of the domains used by the Complainant.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered on July 6, 2023, and hosts a website under the name “PhoenixVerse” which appears to offer/market an automated investment platform which manages investments on the investor’s behalf. The Complainant suspects that the disputed domain name was registered and is being used as a scamming tool with which to defraud Internet users and steal their personal data or money. The Complainant’s suspicion is based on the fact that the PhoenixVerse website hosted on the disputed domain name does not appear to be legitimate and has numerous hallmarks of a fraudulent website, for example, various pages of the disputed domain name are poorly written and contain grammatical errors, whilst the identity/existence of the team members listed on the disputed domain name has proven difficult to verify.

Further, the Complainant notes that the disputed domain name claims that it is connected to the Complainant, in particular that PhoenixVerse's parent company is Phoenix Group Holdings Plc which is the Complainant's parent company. The disputed domain name also uses the Complainant's parent company's registered address and company registration number, most likely because PhoenixVerse is not a legitimate entity. Therefore, it is clear that the Respondent does not use the disputed domain name for any legitimate purposes or in connection with a *bona fide* offering of goods and/or services. Even if the disputed domain name was being used to sell legitimate goods or services, the Respondent would not be using the disputed domain name in connection with a *bona fide* offering of goods or services. This is because the website on the disputed domain name does not accurately disclose the Respondent's relationship (or, indeed, lack thereof) with the Complainant which means that consumers may believe the Complainant owns the disputed domain name. The Respondent does the opposite – it claims to be linked to the Complainant (or its parent company) thereby misleading the public. The Complainant's marks incorporating the PHOENIX sign are associated internationally with the Complainant and their business of managing people's funds whether it be savings or retirement investment pots. The Respondent registered the disputed domain name in full knowledge of the Complainant's activities and reputation and the fact that in doing so it was misappropriating the valuable intellectual property of the Complainant. The Respondent has no connection with the Complainant and there is no evidence of the Respondent holding any rights in a name or a sign which is similar to, or identical with, the Complainant's marks, being commonly known by the disputed domain name or having acquired any legitimate rights in respect of the disputed domain name since its registration or prior to it. Lastly, the Respondent has no authorization to use the Complainant's marks and, therefore, the current use of the disputed domain name by it constitutes a flagrant infringement of the Complainant's marks.

- The disputed domain name was registered and is being used in bad faith. The Complainant suspects that the disputed domain name was registered and is being used as a scamming tool to defraud Internet users and steal their personal data or money. The Respondent was undoubtedly aware of the Complainant's PHOENIX marks which enjoyed widespread international presence for over 200 years before the Respondent registered the disputed domain name. The Respondent deliberately included the PHOENIX mark in the disputed domain name for illegitimate purposes and to create a false impression of association with the Complainant (or its parent company, Phoenix Group Holdings Plc) and to use it as a means of deceiving Internet users. By doing so, in addition to causing damage to the Complainant's business and reputation, the Respondent has also been unfairly exploiting the value of the Complainant's marks. The inclusion of the PHOENIX mark is also likely lead an average Internet user to believe that the disputed domain name is owned by the Complainant (or its parent company, Phoenix Group Holdings Plc). The Complainant has a legitimate interest in the disputed domain name and the registration of the disputed domain name is evidence of the Respondent's intention to disrupt and tarnish the Complainant's business and reputation. Further, the Respondent uses a privacy shield and conceals its real identity which arguably further supports the assertion that the Respondent is intentionally abusing the disputed domain name. Even if the website on the disputed domain name were not used as a scamming tool (which the Complainant considers unlikely), the Respondent would never be capable of using the disputed domain name in a legitimate way as the notoriety and reputation of PHOENIX is such that members of the public would always assume that there is an association between the Respondent and the Complainant, and/or between the Respondent and the Complainant's marks.

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 be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (i) The disputed 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 disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Annex 11 to the Complaint shows trademark registrations belonging to the Complainant for PHOENIX that date as early as in 1987. Along with the trademark registration listed above, the Complainant has demonstrated rights in the PHOENIX trademark.

The trademark PHOENIX is wholly encompassed within the disputed domain name. The disputed domain name differs from the Complainant's trademark PHOENIX merely by the addition of the suffix "verseltd", as well as of the generic Top-Level Domain ("gTLD") extension ".com".

Previous UDRP decisions have found that the addition of terms (such as here, "verse" or "ltd") to a trademark in a domain name does not avoid a finding of confusing similarity (see, e.g., *BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#); and *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#)).

It is also already well established that the addition of a gTLD extension such as ".com" is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use 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; 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 at issue.

Based on the Respondent's default and on the *prima facie* case established by the Complainant, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Although the contents published on the website linked to the disputed domain name could apparently suggest a *bona fide* offering of goods or services, this initial perception is shattered when the Respondent states that it is part of the Complainant's group of companies, circumstance that is denied by the Complainant. Clearly, this attempt to impersonate the Complainant's business group does not constitute legitimate interests in the disputed domain name nor confer rights upon the Respondent.

The Complainant has neither licensed nor authorized the usage of its trademarks to the Respondent.

Finally, the Respondent did not reply to the Complainant's contentions, nor indicated any reason to justify why it has chosen the specific term "phoenixverseltd" to compose the disputed domain name or if he is commonly known by the disputed domain name. Given the use, the composition of the disputed domain name reflects the Respondent's intent to create a direct inference between the disputed domain name and the Complainant, contrary to the fact, which cannot constitute fair use.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent in 2023 the trademark PHOENIX was already directly connected to the Complainant's services for decades, at least. Anyway, considering that on the website linked to the disputed domain name the Respondent expressly claims to be part of the Complainant's group of companies, it would not be feasible to consider that the Respondent – at the time of the registration of the disputed domain name – could not have been aware of the Complainant's famous trademark.

The disputed domain name is apparently being used to promote cryptocurrency trading services. However, the Complainant suspects that it is a scheme designed to defraud Internet users and steal their personal data or money.

Also, whereas the Complainant denies the existence of any business relationship with the Respondent, and no further information was brought by the Respondent – which did not reply to the Complainant's contentions, the Panel concludes that the Respondent has registered and used the disputed domain name to attract Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, as provide by the paragraph 4(b)(iv) of the Policy.

In this Panel's opinion, the addition of the terms "verse" (usually adopted in connection with metaverse-related initiatives) and "Ltd" (the usual acronym of "limited liability company") does not invalidate this conclusion, as it may suggest that the disputed domain name refers to a new company or online initiative of the Phoenix Group. Especially when such website indicates – falsely, accordingly to the Complainant – that it belongs to that business group.

The attempt to impersonate the Complainant's business group, either to commit fraud or even to offer complementary financial services, constitutes registration and use in bad faith, in the opinion of this Panel.

Accordingly, the Complainant has also satisfied 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 <phoenixverseltd.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: October 20, 2023