

ADMINISTRATIVE PANEL DECISION

Notesco Financial Services Limited v. Mark Benzall
Case No. D2023-4421

1. The Parties

The Complainant is Notesco Financial Services Limited, Cyprus, represented internally.

The Respondent is Mark Benzall, Germany.

2. The Domain Name and Registrar

The disputed domain name <Ironfx.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 October 25, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 October 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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on November 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 an online foreign exchange derivatives service provider registered and existing under the laws of Cyprus. The Complainant operates its website at “www.ironfx.eu”. The Complainant serves retail and institutional customers in Europe and is part of a larger group of companies known as the “Notesco Group” which has offices worldwide. Notesco Limited, is also a company which belongs to Notesco Group, which operates its website at “www.ironfx.com”.

The Complainant owns International registration No. 1129032 for its stylized trademark IRONFX, registered on June 28, 2012, and designating *inter alia* the European Union, which includes domicile of the Respondent.

The disputed domain name was registered on July 18, 2023, and resolves to a webpage without any meaningful content. The disputed domain name is used in at least three email addresses for sending and signing defrauding emails to the Complainant’s clients.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name incorporates the Complainant’s trademark precisely with one letter being different “l” instead of “i”. However, the Respondent is using the disputed domain name in low caps to deliberately confuse and eliminate any visible difference from the Complainant’s trademark.

Also, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has never been known by the Complainant’s trademark and the Complainant has never authorized to use its trademark on the Respondent’s email signature. The Respondent’s use of the disputed domain name is solely to defraud clients of the Complainant and steal their funds by hiding behind the disputed domain name and using fake employee names of the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent is using the disputed domain name in bad faith in order to steal funds of clients of the Complainant by convincing them that the Respondent is associated and/or an employee of the Complainant. Specifically, the Respondent is using the disputed domain name to misguide and/or mislead clients by giving the false impression that they deposit funds with the Complainant’s website whereas they transfer funds to an e-wallet which belongs to the Respondent. Also, the Respondent produces fake documents of Notesco Limited, a company which belongs to Notesco Group of the Complainant and sends them to clients. By doing this, it gives a false assumption that the “guarantee” document was produced as an official letter by Notesco Limited. Following the illegal actions of the Respondent from the usage of the disputed domain name, the Complainant and in general Notesco Group are receiving constant complaints from clients that suffered monetary damages. The Respondent has not selected randomly the disputed domain name without having prior knowledge of the Complainant’s business and worldwide scale of services offered to clients. The Respondent deliberately purchased the disputed domain name to exploit the wide-reaching reputation of the Complainant. The Respondent intentionally attempted to attract, for commercial gain, Internet users and clients of the Complainant by creating a likelihood of confusion with the Complainant’s trademark when he sent emails to clients and stole their funds.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the disputed domain name consists of intentional misspelling of the Complainant's trademark substituting "i" of the trademark by "l" in the disputed domain name, keeping the trademark recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

The available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

UDRP panels have held that the use of a domain name for illegal activity (here sending emails to the Complainant's clients falsely pretending to be sent by the Complainant to persuade the clients to transfer funds to the accounts not associated with the Complainant) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent used the disputed domain name as a part of email addresses to impersonate the Complainant and defraud the Complainant's clients, which confirm the Respondent knew and targeted the Complainant and its trademark when registering the disputed domain name, which is bad faith.

UDRP panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. [WIPO Overview 3.0](#), section 3.4. The Panel finds that in the present case use of the disputed domain name to send and sign deceptive emails constitutes bad faith.

Based on the available record, the Panel finds 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 <Ironfx.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: December 7, 2023