

ADMINISTRATIVE PANEL DECISION

Equifax Inc. v. Domain Administrator / Fundacion Privacy Services LTD
Case No. D2023-5147

1. The Parties

The Complainant is Equifax Inc., United States of America, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America.

The Respondent is Domain Administrator / Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <equifax.com> is registered with Media Elite Holdings Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 9, 2023. On December 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 11, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on January 16, 2024. 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 a global provider of information solutions and human resources business process outsourcing services for businesses, governments and consumers, headquartered in Atlanta, Georgia, USA; it operates and has investments around the world. Among its many services, the Complainant offers a credit reporting service that provides consumers with a summary of their credit history, and certain other information, reported to credit bureaus by lenders and creditors (Annex 4 to the Complaint).

The Complainant is the owner of and uses the domain name <equifax.com> to address its primary website; the domain name <equifax.com> was registered February 21, 1995 (Annex 5 to the Complaint).

In its own right, or via an affiliate, the Complainant owns a variety of EQUIFAX trademarks including, for example, Brazil Registered Trademark No 820002100, registered September 21, 1999; Canada Registered Trademark No TMA213693, registered on May 7, 1976; France Registered Trademark No 1648261, registered August 9, 1991; Germany Registered Trademark No 2018558, registered August 11, 1992; and U.S. Registered Trademark No 1027544, registered December 16, 1975 (Annex 10 and 11 to the Complaint).

According to the Complainant's screenshot, the disputed domain name redirected visitors to various websites including a website that falsely informs visitors, "*Your Apple iPhone has been hacked. All operations on your device are being tracked by the hacker. Immediate action is required!*" (Annex 7 to the Complaint).

Further, the Respondent has configured mail exchange ("MX") records for the disputed domain name, which enables the Respondent to send and receive email with addresses that use the disputed domain name (Annex 9 to the Complaint).

The disputed domain name was registered on March 25, 2002 (Annex 1 to the Complaint).

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 EQUIFAX trademark is well-known and notes that the disputed domain name contains the EQUIFAX trademark in its entirety, simply adding the letter "t" in the middle. The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. Further, the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the EQUIFAX trademark in any manner.

The Complainant notes that the disputed domain name was used in connection with a tech support scam that falsely informs visitors their devices have been hacked; this constitutes bad faith since the disputed domain name primarily was used for the purpose of disrupting the business of a competitor and to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's product or service. Further, the use of a domain name for per se illegitimate activity such as phishing is manifestly considered evidence of bad faith.

Finally, the Complainant asserts that the Respondent has established MX records for the disputed domain name, which enables it to use it to send and receive email and is further evidence of bad faith because it gives rise to the strong possibility that the Respondent intended or intends to use the disputed domain name to send emails as part of a fraudulent phishing scheme.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

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.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark EQUIFAX.

In the present case the disputed domain name <equifax.com> is confusingly similar to the EQUIFAX mark in which the Complainant has rights since it only adds the letter "t" in the middle.

It has long been established under UDRP decisions that such misspellings of a trademark or where the relevant trademark is recognizable within the disputed domain name the mere addition of a letter will not prevent a finding of confusing similarity under the first element of the Policy ([WIPO Overview 3.0](#), section 1.9). This is the case at present.

Finally, it has also long been held that generic Top-Level-Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

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. [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 disputed domain name. The Complainant focuses on the fact that its trademark is well known, registered in a variety of jurisdictions around the world and provides suitable evidence of its reputation, adding that it is inconceivable that the Respondent would not have been aware of this when registering the disputed domain name. The Complainant also notes that the disputed domain name is not being used for a bona fide offering of goods or services. The fact that the Complainant put forward evidence, which remains unrebutted, that the disputed domain name was used for phishing or tech support scam, supports the finding that the Respondent has no rights or legitimate interests in the disputed domain name, since such illegal activities can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.

The Respondent did not reply to the Complainant's contentions and hence has not rebutted the Complainant's prima facie showing.

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

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(a) Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith, particularly disputed domain names comprising typos. [WIPO Overview 3.0](#), section 3.1.4. The disputed domain name consists of a common and obvious misspelling of the Complainant's trademark since it only adds a "t" in the middle.

Further, it is inconceivable that the Respondent has registered the disputed domain name without knowledge of the Complainant's rights; this is especially supported by the fact that the Complainant has a strong Internet presence and the Complainant has rights in and is using the mark EQUIFAX for decades and long before the registration of the disputed domain name.

The Panel is therefore convinced that the disputed domain name was registered with full knowledge of the Complainant's rights and as such in bad faith by the Respondent.

(b) The Complainant put forward evidence that the disputed domain name was used to redirect visitors to various websites including a website that falsely informs visitors, "*Your Apple iPhone has been hacked. All operations on your device are being tracked by the hacker. Immediate action is required!*"

This fraudulent and deceptive scheme (tech support scam and phishing) represents itself bad faith use of the disputed domain name.

Hence, the Respondent intentionally, and for commercial gain, registered and has 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 the Respondent's website.

Further, the Respondent has configured MX records for the disputed domain name, which enables the Respondent to send and receive email with addresses that use the disputed domain name.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain name supports the finding of 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 <equifax.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: January 30, 2024