

ADMINISTRATIVE PANEL DECISION

Firefly-One, LLC, Neotek, Inc. v. LEW Ventures LLC, Eugene Wisakowsky
Case No. D2024-1006

1. The Parties

The Complainants are Firefly-One, LLC and Neotek, Inc., United States of America (“United States” or “U.S.”), represented by Ward Law Office, LLC, United States.

The Respondents are LEW Ventures LLC and Eugene Wisakowsky, United States of America.

2. The Domain Name and Registrar

The disputed domain name <firefly-one.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2024. On March 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 11, 2024, 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 (Agnuity, Inc.), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 2024, 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 March 13, 2024.

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, paragraph 2 and 4, the Center formally notified the Respondent of the Complaint, and administrative proceedings commenced on March 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 9, 2024.

Because the Respondent did not submit a Reply, the Panel has carefully reviewed the record to ensure that the Center fulfilled its responsibility to employ reasonably available means calculated to achieve actual notice to the Respondent, as mandated by paragraphs 2(a) and 4(g) of the Rules. See *Nicole Kidman v. John Zuccarini*, WIPO Case No. [D2000-1415](#). On March 18, 2024, the Center sent emails to the email address associated with the Respondent, notifying it of the Complaint and transmitting the Complaint and its Annexes. The Center also sent a notice of the Complaint via mail courier to the two addresses associated with the Respondent; Courier tracking indicates that both notices were delivered and signed for on March 20, 2024. It thus appears that the Respondent received actual notice of these proceedings. Regardless, the Panel is satisfied that the Center has employed “reasonably available means” in attempting to provide actual notice to the Respondent and has thus fulfilled its obligation pursuant to paragraphs 2(a) and 4(g) of the Rules.

The Center appointed David H. Bernstein as the sole panelist in this matter on April 18, 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 Firefly-One LLC owns U.S. Trademark Registration 5,388,040 for FIREFLY-ONE for “Flashing strobe light apparatus”, applied on December 7, 2016, and registered on January 23, 2018. The Complainant Neotek, Inc. owns pending U.S. Trademark Application Serial Nos. 98271336, applied on November 15, 2023, and 98271353, applied on November 15, 2023 for FIREFLY-ONE and FIREFLY-ONE and Design, respectively, each for “Lighting installations; Lighting apparatus, namely, lighting installations; LED lighting installations” and “Installation of lighting apparatus; Lighting apparatus installation; Technical consultation in the field of installation of lighting apparatus, lighting instruments and lighting systems.”

The disputed domain name has a creation date of November 10, 2017, and automatically redirects to the domain name <agnuity.com> which resolves to a website that states: “Agnuity. Our site is coming soon. We are doing some maintenance on our site. It won’t take long, we promise. Come back and visit us again in a few days. Thank you for your patience!”

5. Parties’ Contentions

A. Complainant

The entirety of the substantive factual allegations contained in the Amended Complaint are reproduced below:

“The Complainants are the owners of the following trademark registrations and applications for the mark ‘FIREFLY-ONE’ and ‘FIREFLY-ONE and Design’: U.S. Registration 5,388,040; U.S. Application Serial No. 98/271/353; and U.S. Application Serial No. 98/271,336, copies of which are provided in Annex 4.

“The Disputed Domain Name FIREFLY-ONE.COM is identical or confusingly similar to the Complainant’s Trademarks. The ownership of all rights to the trademark has been assigned to the Complainants, and thus Respondent’s use of the domain name to redirect traffic to a newly formed company is an improper usage.

“The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is using the domain name to redirect potential consumers to a new company website. Since the new company LEW Ventures LLC and Mr. Wisakowsky, are in contact with employees that were previously licensees of the trademarks, which license has been terminated because of licensee breach, this improperly tricks potential consumers into assuming that there is an affiliation between LEW Ventures LLC/Mr. Wisakowsky and Firefly-One, LLC.

“The Respondent has employees that were previously licensees of Firefly-One, LLC. However, that affiliation no longer exists. In fact, those individuals were contacted by attorneys for Complainants on September 27, 2023, and October 17, 2023, advising those individuals that they were in breach of the license, which breach was never corrected, and according the individuals were advised to cease and desist use of the ‘FIREFLY-ONE’ trademarks and other intellectual property. Copies of the letters provided in Annex 5. [Those two letters asserted (1) that the Respondent is in breach of a patent license with the Complainant and must therefore discontinue all use of the patents at issue; and (2) that the Complainant owns trademark rights in the FIREFLY-ONE trademark and that the Respondent must either discontinue use of the FIREFLY-ONE trademark or enter into a dealer agreement with the Complainant, which would give the Respondent certain unspecified rights.]

“Despite all of the above Respondent, and despite attempts to resolve this matter amicably, Respondent continues to maintain the domain name and use the ‘FIREFLY-ONE’ mark to redirect web-based traffic to a newly formed and unrelated website “Agnuity.com” owned by LEW Ventures LLC and Mr. Wisakowsky.

“The Respondent has been using the Disputed Domain Name in bad faith. The domain was purchased in 2017 by Firefly-One, LLC. In 2018 Firefly-One, LLC entered into a license agreement with Firefly-One, Inc. in 2018. That license agreement was terminated in 2023 as a result of a breach by licensee, thus terminating any right for licensee to use the trademarks.

“As Respondent was previously employed by Firefly-One, Inc, Respondent had access to the domain name records and appears to be improperly redirecting the www.firefly-one.com domain to the newly formed agnuity.com owned by LEW Ventures LLC and Mr. Wisakowsky. This was unauthorized by the owners of the trademark ‘FIREFLY-ONE’ and has continued despite repeated attempts to resolve this matter.”

B. Respondent

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

6. Discussion and Findings

A. Identity of the Parties

Before turning to the merits, the Panel must first address the identity of the parties, given that the Complaint has named two parties as Complainants and two parties as Respondents.

The Amended Complaint has named as Complainants in this matter Firefly-One, LLC and Neotek, Inc. As noted above, the Complaint identifies “[t]he Complainants” as “the owners” of the listed trademark registration and applications. The cited registration is owned by Complainant Firefly-One, LLC; the two applications are owned by Complainant Neotek, Inc. The Complaint does not indicate the relationship, if any, between these two parties. In the USPTO records, the two companies have different addresses, but do have the same attorney of record. The applications have not yet been examined by the USPTO, and thus applicant Neotek has not yet been asked to clarify its relationship, if any, with the owner of the FIREFLY-ONE registration (Firefly-One, LLC). Although there is some ambiguity, given that the Complainant asserts that the two companies are the “owners” of the marks and that they have the same attorney of record (whose firm also is representing the Complainant in this proceeding), the Panel will assume, for purposes of this proceeding, that the parties are related and will therefore allow both to identified, jointly, as the Complainant.

The Complaint has named as the Respondents in this matter LEW Ventures LLC and Eugene Wisakowsky. LEW Ventures LLC is listed in the Whois data for the domain name disclosed by the Registrar as the registrant, and Mr. Wisakowsky is listed as the administrative and technical contact. In its verification response, the Registrar has identified both LEW Ventures LLC and Mr. Wisakowsky as the current registrant, while providing Whois details showing Mr. Wisakowsky as the administrative and technical contacts. Accordingly, the Panel will treat them, jointly, as the Respondent.

B. Identical or Confusingly Similar

The Complainant has shown rights with respect to the federally registered FIREFLY-ONE mark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. The entirety of the FIREFLY-ONE mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

The Complainant bears the burden of proof in UDRP proceedings. It is, therefore, the Complainant's obligation to put forth facts sufficient to show that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Mere conclusory statements unsupported by evidence are insufficient to prove a party's case. [WIPO Overview 3.0](#), section 4.2.

Given the Respondent's default, the Panel will accept as true the factual allegations of the Complaint, as well as reasonable inferences that can be drawn therefrom. [WIPO Overview 3.0](#), section 4.3. Although the Complaint is bare, as best as the Panel can tell from the Complaint and the two demand letters attached thereto, the Respondent was formerly an employee of Firefly-One, Inc., a former patent licensee of the Complainant (Firefly-One, LLC). The Respondent somehow obtained control of the disputed domain name (which is not explained in the Complaint) and is now using the disputed domain name to redirect Internet users to a new website (which does not yet contain any content). The Complainant further asserts that the Respondent has employed individuals who were previously licensees of the trademarks, though the Complaint does not explain who these employees are, whether they were employees of Firefly-One, Inc. or some other entity, or the relationship between their alleged trademark license and the patent license referenced in the Complainant's demand letters.

Although the Complainant's conclusory allegations suggest that the Respondent may be engaged in some violation of the Complainant's rights, the Complainant simply has not explained the nature of the relationship between the Parties, or the alleged misconduct by the Respondent, with sufficient clarity to sustain its burden of proof. Because the facts are within the Complainant's control, and because the Complainant could have explained the facts that would demonstrate that the Respondent lacks rights or legitimate interests in the disputed domain name, the Panel has no choice but to conclude that, on the record presented, the Complainant has failed to prove by a preponderance of the evidence that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel acknowledges that the Complainant has asserted that the Respondent is improperly tricking consumers into assuming there is an affiliation between the Respondent and the Complainant. Had the Complainant proven up that conclusion with facts, that would have satisfied the second element of the Policy (which provides that a respondent lacks rights or legitimate interests if it registers a domain name primarily for the purpose of disrupting the business of a competitor or uses a domain name intentionally to attract Internet users to its web site by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement). The Complainant, though, has not adduced any facts to actually prove such conduct. Rather, the Complainant simply makes a conclusory allegation of trickery, without providing the necessary supporting factual allegations. This is a failure of proof for which the Complainant and its counsel are solely responsible.

As such, the Panel reluctantly finds, based on the thin record here and the failure to allege supporting facts, that the Complainant has not established the second element of the Policy.

D. Registered and Used in Bad Faith

The record further lacks any allegations or evidence indicating that the Respondent registered the disputed domain name in bad faith. Indeed, the record lacks any allegations at all about the Respondent's registration or acquisition of the disputed domain name.

What the Complaint does say is that it was the Complainant – not the Respondent – who registered the domain name in 2017. The Complaint goes on to assert that, because the Respondent was previously employed by Firefly-One, Inc., the Complainant's patent licensee, the Respondent somehow "had access to the domain name records and appears to be improperly redirecting the "www.firefly-one.com" website to the newly formed "www.agnuity.com" website, but the Complainant does not provide any details on how this allegedly happened, why the Complainant no longer owns the domain name, and when the Respondent become the owner of the domain name.

That timing issue is key. If the Respondent registered the disputed domain name with the Complainant's consent (e.g., as part of the patent license arrangement), that would not necessarily constitute bad faith registration. See generally *Thread.com, LLC v. Poploff*, WIPO Case No. [D2000-1470](#). On the other hand, if the Respondent registered the domain name without the Complainant's consent or knowledge, such as with the purpose of diverting customers, or if the Respondent registered the Domain Name in his own name against the instructions of the Complainant, that could constitute bad faith registration. See, e.g., *Champion Innovations, Ltd. v. Udo Dussling (45FHH)*, WIPO Case No. [D2005-1094](#).

The Panel does not know which, if any, of these describes the nature of the domain name registration here. That is because the Complainant has failed to allege any facts at all about how and when the Respondent acquired the disputed domain name. In light of the absence of any factual allegations explaining why the registration of the domain name was in bad faith, the Complainant has failed to meet its burden of proving that the Respondent registered the domain name in bad faith.

Similarly, for the reasons described in the preceding section, the Complainant has failed to allege facts explaining how the Respondent has used the disputed domain name in bad faith.

This decision should not be read as a vindication of the Respondent's conduct. As noted above, the Complainant's conclusory allegation suggest that the Respondent may have taken control of the disputed domain name without the Complainant's consent, and may be using or planning to use the domain name in ways that will interfere with the Complainant's business. But, as explained above, conclusory allegations are not sufficient to prevail in a UDRP proceeding, the Complainant must come forward with facts to substantiate its suspicions. The Complainant has failed to do so.

Accordingly, the Panel finds that the Complainant has failed to establish the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/David H. Bernstein/

David H. Bernstein

Sole Panelist

Date: May 2, 2024