

ADMINISTRATIVE PANEL DECISION

FLRT, Inc. v. James Lace
Case No. D2024-1129

1. The Parties

Complainant is FLRT, Inc., United States of America (“U.S.”), represented by Silverstein Legal, U.S.

Respondent is James Lace, U.S.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same March 15, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email to Complainant on March 18, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same March 18, 2024.

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 Respondent of the Complaint, and the proceedings commenced on March 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 16, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on April 19, 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

According to the Complaint:

“Complainant owns and operates the website located at the domain <feetfinder.com> and has used its domain for several years in connection with the provision of a social media platform that allows users to post and subscribe to online foot fetish content (“FeetFinder”) on the World Wide Web. [...] In providing its services, Complainant has made extensive use of the FEETFINDER trademark.”

Complainant alleges that “is the most popular website in the world to view, buy, and sell feet content. According to similarweb, it has received over 6 million visitors.” A screenshot from the website “www.similarweb.com”, annexed to the Complaint, appears to corroborate this assertion.

Complainant holds a United Kingdom trademark registration for the word mark FEET FINDER, UK Reg. No. 00003951117, registered with an August 30, 2023 effective date in connection with “arranging subscriptions to publications for others; arranging subscriptions to Internet services for others.”

In addition, Complainant holds a European Union trademark registration for the word mark FEETFINDER, EU Reg. No. 018818577, registered on December 8, 2023 in connection with “arranging subscriptions to publications for others; arranging subscriptions to Internet services.”

Complainant has also applied for the registration of the word mark FEETFINDER with the United States Patent and Trademark Office (“USPTO”), Serial No. 97702233, application date December 2, 2022, in connection with:

“The bringing together, for the benefit of others, of custom photos and pictures of feet, excluding the transport thereof, enabling verified customers to conveniently view and purchase those goods by means of on-line retail stores; providing a website for connecting verified sellers with verified buyers in the field of custom photos and pictures of feet; online retail store services featuring custom photos and pictures of feet; provision of an on-line marketplace for verified buyers and verified sellers of custom photos and pictures of feet.”

The USPTO application claims a June 20, 2019 date of first use in commerce. This application is still pending.

The Domain Name was registered on January 30, 2023. The Domain Name resolves to a website offering subscription services to individuals with foot fetishes. The services offered at Respondent’s site appear to be similar to those offered at Complainant’s site. The graphic presentation on Respondent’s site does not resemble that on Complainant’s site.

On March 7, 2023, Complainant’s counsel sent a cease-and-desist letter to the Registrar (Respondent used a privacy service) and, as far as the record shows, Complainant received no response to this letter.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and 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 Complainant's trademark and the Domain Names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Panel concludes that Complainant has rights in the trademark FEETFINDER through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The Domain Name uses the singular "foot" instead of "feet" and adds the article "the," but these minor differences do not overcome the fact that Complainant's mark remains recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 or service mark at issue.

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 often primarily within the knowledge or control of the respondent. Thus, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production 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.

On this undisputed record, and on a balance of probabilities, the Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward to assert a bona fide basis for registering the Domain Name.

The Panel first rejects Complainant's argument that Respondent has engaged in "typosquatting." That term is better suited to a situation where a domain name is a misspelling of a complainant's trademark. Here, the three words in the Domain Name, "the foot finder," are actual words, correctly spelled, and conceivably capable of a meaning unrelated to Complainant's FEETFINDER mark.

In any event, there is just enough in this record to conclude that Respondent more likely than not targeted Complainant's mark when registering the Domain Name. Although Complainant had not been using the mark for a particularly long period prior to the registration of the Domain Name, it appears that Complainant's <feetfinder.com> website had achieved a degree of notoriety within the relatively narrow milieu of foot fetish enthusiasts. Further, because this milieu appears to be a narrow niche within the hobbyist world, it is difficult to accept that Respondent set out to register the Domain Name and offer services similar to those offered by Complainant without having been aware of Complainant's website and mark. In the absence of any explanation from Respondent, the Panel has little choice but to conclude that Respondent was probably aware of Complainant's mark when registering the Domain Name. Having made this finding, the Panel must conclude that Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

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

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. On this record, the Panel finds it more likely than not that Respondent targeted Complainant's mark when registering the Domain Name, and has used the Domain Name for illegitimate commercial gain by seeking to divert Internet traffic for commercial gain by free-riding on Complainant's mark. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <thefootfinder.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 3, 2024