

ADMINISTRATIVE PANEL DECISION

Fisher Asset Management, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2024-2356

1. The Parties

The Complainant is Fisher Asset Management, LLC, United States of America, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrar

The disputed domain names <disherinvestments.com>, <fisheriinvestments.com>, <fisherinvestkents.com>, <fisherinvestmdents.com>, <fisherinvestmentfs.com>, and <fishsrinvestments.com> (the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2024. On June 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On June 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 June 18, 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, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2024.

The Center appointed Nicholas Weston as the sole panelist in this matter on July 26, 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 was incorporated in the United States in 1979 and operates an investment advisory business with 5,000 employees serving over 135,000 clients globally and has (including its subsidiaries) over USD 211 billion in assets under management. The Complainant holds a number of registrations for the trademark FISHER INVESTMENTS, including United States Trademark Registration No. 3,103,881. registered on June 13, 2006 and European Union Trademark Registration No. 013338595 for the mark FISHER INVESTMENTS registered on February 5, 2015.

The Complainant owns several domain names that comprise of, or contain, the trademark FISHER INVESTMENTS, including the domain name <fisherinvestments.com> which hosts its main website.

Five of the Disputed Domain Names <disherinvestments.com>, <fisherinvestkents.com>, <fisherinvestmdents.com>, <fisherinvestmentfs.com>, and <fishsrinvestments.com> were registered by the Respondent on March 11, 2024 and the Respondent registered a sixth, <fisheriinvestments.com>, on April 19, 2024.

Each of the Disputed Domain Names resolves to a pay-per-click (PPC) landing-page displaying the following (respective) sponsored links:

| Disputed Domain Name: | Sponsored Links on the PPC Landing Page: |
|------------------------------|--|
| <disherinvestments.com> | Pension Fund, Retirement Plans, Retirement Fund |
| <fisheriinvestments.com> | Investment Accounts, Property Investment Opportunities Nearby, Property management |
| <fisherinvestkents.com> | Vanguard Investor service, Best Futures Trading Platform, Fisher Investments |
| <fisherinvestmdents.com> | Property investment, property investment opportunities, investment properties |
| <fisherinvestmentfs.com> | Investment Properties, Vanguard Investor Service, Property Management |
| <fishsrinvestments.com> | Property Investment, Property Investment Opportunities, Investment Properties |

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 Names.

Notably, the Complainant cites its trademark registrations in various jurisdictions for the mark FISHER INVESTMENTS and variations of it, as prima facie evidence of ownership.

The Complainant submits, in essence, that its rights in that the mark FISHER INVESTMENTS mark predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Names are confusingly similar to its trademark, because each Disputed Domain Name is comprised of "a misspelling" of the FISHER INVESTMENTS trademark "that varies from the Complainant's trademark by only one letter" being "an adjacent letter of the QWERTY keyboard" to the letter being replaced, and submits that this is classic typosquatting that is not sufficient to avoid the confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because the “Complainant has not given Respondent permission to use Complainant’s trademarks in any manner, including in domain names” and none of the other circumstances set out in paragraph 4(c) of the Policy apply. The Complainant also submits that “[t]he Respondent is using the Disputed Domain Names to redirect internet users to websites that feature links to third-party websites, some of which directly compete with Complainant’s business” which is not a bona fide offering of goods and services.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name were, and currently are, in bad faith, contrary to the Policy and the Rules having regard to the prior use and well-known nature of the Complainant’s trademark, and submits that the use of the Disputed Domain Names for PPC advertising of services that compete with the Complainant is use in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark FISHER INVESTMENTS in a number of countries.

Turning to whether the Disputed Domain Names are identical or confusingly similar to the FISHER INVESTMENTS trademark, the Panel observes that each Disputed Domain Name is comprised of the Complainant’s trademark varied as follows:

| Disputed Domain Name: | Description of Typo: |
|------------------------------|---|
| <disherinvestments.com> | the “f” in the word “FISHER” has been replaced with the keyboard adjacent letter “d”. |
| <fisheriinvestments.com> | the letter “i” in the word “INVESTMENTS” has been repeated twice. |
| <fisherinvestkents.com> | the letter “m” in “INVESTMENTS” has been replaced with the keyboard adjacent letter “k”. |
| <fisherinvestmdents.com> | an additional (and keyboard adjacent) letter “d” has been inserted before the second “e” in the word “INVESTMENTS”. |
| <fisherinvestmentfs.com> | An additional (and keyboard adjacent) letter “f” has been added after the second “t” in the word “INVESTMENTS”. |
| <fishsrinvestments.com> | the letter “e” in the word “FISHER” has been replaced with the adjacent letter “s”. |

Each is also followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. The relevant comparison to be made is with the second-level portion of each of the Disputed Domain Names, specifically: “disherinvestments”, “fisheriinvestments”, “fisherinvestkents”, “fisherinvestmdents”, “fisherinvestmentsfs”, and “fishsrinvestments”, respectively.

The Panel finds the mark is recognizable within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

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 Disputed Domain Names (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 Names. 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 Names such as those enumerated in the Policy or otherwise.

The Panel notes the evidence that the Disputed Domain Names – typos of the relevant mark – resolve to PPC landing pages, which supports the Complainant’s submission on that point and finds that this does not represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the evidenced reputation and goodwill of the Complainant’s mark or capacity to otherwise mislead Internet users.

The Panel finds the second element of the Policy has been established for the Disputed Domain Names.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the distinctive nature of the Complainant's trademark, the Panel is satisfied that the Respondent knew of and targeted the Complainant's trademark FISHER INVESTMENTS when it registered the Disputed Domain Names (see *Fisher Asset Management LLC d/b/a Fisher Investments v. Sergey*, WIPO Case No. [D2018-0336](#) ("the notoriety of the Complainant's mark all around the world"); *Fisher Asset Management LLC d/b/a Fisher Investments v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Kekek Pekek*, WIPO Case No. [D2021-1517](#) ("[g]iven the global reach and popularity of the Complainant's investment management and investment advisory services under the FISHER INVESTMENTS Trademark"); *Fisher Asset Management, LLC v. Domain Admin*, WIPO Case No. [D2023-3801](#) ("the well-known status of the Complainant's trademark")).

This Panel finds that there is no reason for the Respondent to have registered the typo Disputed Domain Names other than to trade off the reputation and goodwill of the Complainant's well-known trademark. [WIPO Overview 3.0](#), section 3.1.4.

Further, a gap of several years between registration of a complainant's trademark and respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration. In this case, the Respondent registered the Disputed Domain Names some 18 years after the Complainant established registered trademark rights in the FISHER INVESTMENTS mark.

On the issue of use, the Complainant's evidence is that each Disputed Domain Names resolves to a PPC landing page displaying sponsored links related to investments and investment or pension related products and services. Targeting of this nature is a common example of bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP decisions. [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

This Panel finds that this is a case of classic typosquatting where the Respondent has taken a recognizable version of the Complainant's trademark FISHER INVESTMENTS and incorporated it in each Disputed Domain Name without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain.

There is also evidence that the MX record has been activated for the Disputed Domain Name, allowing email to be routed to a mail server, and so the Panel makes a further finding of bad faith under the Policy given the increased risk of fraud or phishing involving the Disputed Domain Name by creating a likelihood of confusion with the Complainant's mark (see [WIPO Overview 3.0](#), section 3.1.4).

The Panel notes that Carolina Rodrigues, Fundacion Comercio Electronico has been the losing party in over 460 other UDRP proceedings, as evidenced by a simple search of the Center's publicly accessible database. Given this extensive history, the Panel concludes that the Respondent is a serial offender who intentionally targeted the Complainant and demonstrates a consistent pattern of bad faith conduct ([WIPO Overview 3.0](#), section 3.1.2).

The privacy or proxy service, Domains By Proxy, LLC, is also named in more than 250 of those UDRP decisions as a co-respondent with serial offender Carolina Rodrigues. The sheer number of these adverse decisions involving a known bad actor indicates to this Panel a behavioral pattern that demonstrates a lack of proactive measures to dissociate from such conduct and supports a further finding of bad faith against the Respondent and the Panel exercises its discretion to so find even though there is no indication of a relationship beyond the continued provision of privacy or proxy registration services to a known bad actor (See [WIPO Overview 3.0](#), section 4.4.5).

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 names <disherinvestments.com>, <fisheriinvestments.com>, <fisherinvestkents.com>, <fisherinvestmdents.com>, <fisherinvestmentfs.com>, and <fishsrinvestments.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: August 9, 2024