

ADMINISTRATIVE PANEL DECISION

Emeria Europe v. zhang wei
Case No. DCO2024-0046

1. The Parties

The Complainant is Emeria Europe, France, represented by Atout PI Laplace, France.

The Respondent is zhang wei, China.

2. The Domain Name and Registrar

The disputed domain name <foncia.co> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 4, 2024. On July 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 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 (REDACTED FOR PRIVACY, Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 12, 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 July 15, 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 July 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 10, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on September 17, 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 French company, providing real estate services to both individuals and businesses. The Complainant operates in France under the FONCIA brand through a unique network of over 500 branches. The Complainant also provides its services in Switzerland, Germany and the United Kingdom and has strong presence in Belgium, Luxembourg, Netherlands (Kingdom of the) and Portugal where the company operates under various brands through a network of over 200 branches. It represents 17,000 employees in 8 countries, over 700 branches that correspond to EUR 1.5 billion revenue.

The Complainant is the owner of several trademark registrations for FONCIA in various countries in the world including for instance International registration No. 941643 registered on May 4, 2007, and covering inter alia China.

The Complainant has its official website at “www.fr.foncia.com” owned since December 11, 1998.

The disputed domain name was registered on August 9, 2023, and resolves to a parked page comprising pay-per-click advertising links, some of which direct to sites which are in competition with the Complainant.

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 in whole and therefore reproduces identically the Complainant's trademark. The addition of the country-code Top-Level Domain (“ccTLD”) “.co” should be disregarded when assessing identity or confusing similarity as it is a standard registration requirement.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent is not sponsored by or affiliated with the Complainant in any way; nor has the Complainant given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names, also not having the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademark. The Respondent is not commonly known by the disputed domain name and has not acquired any trademark rights in the disputed domain name. The Respondent is using the disputed domain name to direct Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. This therefore cannot amount to a bona fide commercial use, since the confusing similarity between the disputed domain name and the Complainant's mark will mislead consumers into thinking that the Respondent's parking page is linked to the Complainant. The disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the disputed domain name. The use of the disputed domain name in connection with a parking page displaying pay-per-click links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users. Moreover, the Complainant's trademark is coined term that

appear to be principally associated with the Complainant. The Respondent earns pay-per-click revenue in relation to such sponsored links. This parking page at the disputed domain name has been created in the hope and expectation that confused Internet users searching for the trademark owner will be directed to the Respondent's parking page for commercial gain. The Respondent has sought to take commercial advantage of the goodwill associated with the Complainant's trademark, and domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name reproduces identically the famous Complainant's trademark registered well before 2023. There is also similarity with prior domain name used by the Complainant to present its real estate activity at "www.fr.foncia.com". The Respondent was aware of the Complainant and its trademark and registered the disputed domain name based on the attractiveness of the Complainant's trademark. The Internet search engines yield results for the Complainant and its products and services when using "foncia" as a search term and, therefore, the Respondent either knew or should have known of the Complainant's trademark when registering the disputed domain name. One messaging server with one IP address has been created for the disputed domain name and may be used for phishing purposes. The disputed domain name resolves to a parking page with links to real estate services for which the Complainant is well known. The Respondent earns pay-per-click revenue in relation to such sponsored links. The Respondent's primary motive in registering and using the disputed domain name was to capitalize on or take advantage of the Complainant's trademark through the creation of confusion in the mind of Internet users. The disputed domain name was registered primarily for the purpose of disrupting the business of the Complainant. Registrant's name/organization were chosen to be anonymized through a privacy service, which is often used by scammers. The Respondent appears to face many UDRP proceedings concerning notably domain names in ".co" ccTLD that have been transferred to the complainants in many cases. The Respondent does not make fair use of the disputed domain name which was only registered to mislead the Complainant's clients.

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.

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 applicable Top-Level Domain in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards ccTLD ".co" for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The entirety of the mark is reproduced within the disputed domain name with no additions. 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.

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](#)).

The use of a domain name to host a parked page comprising pay-per-click links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. The Panel finds this applies to the present case. [WIPO Overview 3.0](#), section 2.9.

Noting the high risk of implied affiliation between the disputed domain name and the identical widely known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

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 registered disputed domain name identical to the widely known Complainant’s coined trademark and placed a parking webpage with pay-per-click links to businesses competing with the Complainant. This confirms the Respondent knew or should have known of the Complainant and its prior rights while registering the disputed domain name, which is bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet

users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. Using the disputed domain name to host a pay-per-click parking page the Respondent creates a likelihood of confusion with the Complainant's trademark and potentially obtains revenue from this practice. Under such circumstances the Panel finds that the disputed domain name is being used in bad faith. [WIPO Overview 3.0](#), section 3.3.

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 <foncia.co> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: October 1, 2024