

ADMINISTRATIVE PANEL DECISION

Fry Communications Inc. v. Trenches lawa
Case No. D2023-2085

1. The Parties

Complainant is Fry Communications Inc., United States of America (“United States”), represented by Kohn, Swift & Graf, P.C., United States.

Respondent is Trenches lawa, United States.

2. The Domain Name and Registrar

The disputed domain name <frycomn.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 May 10, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 11, 2023, 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 May 22, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 26, 2023.

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 Respondent of the Complaint, and the proceedings commenced on June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 6, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on July 13, 2023. 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

Founded in 1934, Complainant is a publisher and printer. According to the Complaint, Complainant is “an established digital and print publisher working with government and commercial clients throughout the United States”. Complainant states that it is “one of the top five commercial printers in the nation”.

Complainant has no registered trademark relevant to this case, but Complainant has provided ample evidence of its use of the FRYCOMM and FRY COMMUNICATIONS marks to identify and distinguish its services, including printed advertisements, sponsorship of events, and the website located via the domain name <frycomm.com>, a domain name Complainant has owned and used since 1995. Complainant asserts that its annual revenues are roughly USD 200 million, and that its annual advertising expenses are roughly USD 100,000 (for trade shows, advertisements, promotional items, and so forth).

The Domain Name was registered on April 24, 2023. It resolves to a parking page. According to Complainant, however:

“The Respondent used the disputed domain name in an illegal phishing and email scam to attempt to deceive and defraud the Complainant and its client out of thousands of dollars. Using an email address with the disputed domain name, the Respondent attempted to deceive the Complainant's client into believing it was an employee of the Complainant and sought payment of outstanding invoices. A WHOIS search revealed that the Respondent has used a privacy shield to conceal its identity to prevent the Complainant from recovering the stolen funds, should any attempts to divert accounts receivable be successful.”

Respondent has not disputed any of the foregoing allegations.

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 substantively 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

The Panel concludes that Complainant has proven its unregistered rights in the common law trademark FRYCOMM through evidence of use and renown demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. Despite the substitution of the final “m” with an “n” in the Domain Name, the FRYCOMM 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.

The Panel concludes that Respondent lack rights or legitimate interests in respect of the Domain Name. Respondent has not come forward to articulate any *bona fides* she may have vis-à-vis the Domain Name. Given the undisputed record here, it is virtually inconceivable that Respondent could have rights or legitimate interests in the Domain Name. It is alleged, and not denied, that Respondent has used the Domain Name to create fake emails and thereby impersonate Complainant with the ultimate goal of defrauding Complainant's clients out of money. Such a use of the Domain Name is patently illegitimate.

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, on this record, that Respondent has registered and used the Domain Name in bad faith under the Policy. The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section, and concludes that Respondent's conduct runs afoul 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, <frycomn.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: July 25, 2023