

ADMINISTRATIVE PANEL DECISION

Fiorucci Holdings Limited v. brors aaa

Case No. D2023-2931

1. The Parties

The Complainant is Fiorucci Holdings Limited, United Kingdom, represented by Bird & Bird LLP, United Kingdom.

The Respondent is brors aaa, United States of America.

2. The Domain Name and Registrar

The disputed domain name <fioricci.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 14, 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 (Redacted for privacy, <PrivacyGuardian.org> LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 2023 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 amendment to the Complaint on July 21, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on August 29, 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

The Complainant is an Italian fashion brand, based in London, United Kingdom. The Complainant was established in 1967 and newly revived in 2017. The Complainant offers a product range including clothing, footwear and accessories through a store in London, through various retailers worldwide and online.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter together referred to as the “Trademarks”):

- International Trade Mark registration No. 422510 for FIORUCCI registered on April 29, 1976;
- European Union Trade Mark registration No. 000367250 for FIORUCCI registered on February 20, 2001
- European Union Trade Mark registration No. 014755573 for FIORUCCI registered on March 31, 2020
- International Trade Mark registration No. 1645525 for FIORUCCI registered on July 13, 2021

Further, it is undisputed that the Complainant is the holder of the domain name <fiorucci.com>. The Domain Name was registered on May 12, 2023. At the time that the Complainant filed the Complaint, the Domain Name resolved to a webpage on which explicit pornographic content was shown. Currently, the Domain Name does not resolve to an active webpage.

5. Parties’ Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is identical or confusingly similar to its Trademarks that enjoy a reputation, except for the substitution of the letter ‘u’ with the letter ‘i’. According to the Complainant, the Respondent seeks to take advantage of consumers who make a typographical error with this example of typosquatting.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Complainant argues that the Respondent is not commonly known by the Domain Name and does not hold any trademark or intellectual property rights to the Domain Name. Further, the Complainant states that they have never authorized, licensed, approved or otherwise permitted the Respondent’s use of the Trademarks in the Domain Name. According to the Complainant, the use of a domain name to host pornographic content, which is unrelated to the domain name itself, does not constitute a *bona fide* offering of goods and services.

Lastly, according to the Complainant, the Respondent has registered and uses the Domain Name in bad faith. The Complainant submits that the Respondent was aware of the reputation of the Complainant’s business and its Trademarks at the time the Domain Name was registered. According to the Complainant the Respondent has intentionally, for commercial gain and to tarnish the Complainant’s reputation, attempted to attract Internet users to the Respondent’s website by creating a likelihood of confusion between the

Trademark and the Domain Name and because the website to which the Domain Name resolved displayed explicit pornographic content.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- ii. the 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.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(ii) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)"). In cases where a domain name consists of a common, obvious, or intentional misspelling of a trademark, the disputed domain name is considered by panels to be confusingly similar to the relevant mark (see section 1.9 of the [WIPO Overview 3.0](#)).

In the present case, the Domain Name incorporates the Complainant's Trademarks in their entirety with the mere substitution of the letter 'u' with the letter 'i'. This constitutes an intentional misspelling of the Trademarks and does not prevent a finding of confusing similarity between the Trademark and the Domain Name. Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to

make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to address the *prima facie* case thus established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present. This is reinforced by the fact that there is no apparent connection between the word 'FIORICCI' and the pornographic content to which the Domain Name resolved. Therefore, the Respondent has not demonstrated a legitimate interest in the Domain Name (see, e.g. *Unilabs AB v. Domain Administrator*, see <PrivacyGuardian.org> / *Xian Xing Hao*, WIPO Case No. [D2019-2599](#); *Fiorucci Holdings Limited v. Domain Administrator*, see <PrivacyGuardian.org> / *Bo Yu*, WIPO Case No. [D2020-3359](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is inconceivable that the Respondent chose the Domain Name with knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP WIPO decisions (see e.g. *Fiorucci Holdings Limited v. Fiorucci Indian*, WIPO Case No. [D2021-2301](#); *Fiorucci Holdings Limited v. Zedong Yang*, WIPO Case No. [D2020-3075](#)).

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith, particularly in case of typosquatting (see section 3.1.4 of the [WIPO Overview 3.0](#)). This presumption of bad faith also applies to a domain name that diverts Internet users to a pornographic website when it can be assumed that the Respondent had the Complainant in mind when registering the Domain Name, such as in the present case (see e.g., *CHRISTIAN DIOR COUTURE v. Paul Farley*, WIPO Case No. [D2008-0008](#); *The Perfect Potion v. Domain Administrator*, WIPO Case No. [D2004-0743](#); *V&V Supremo Foods, Inc. v. pxlchk1@gmail.com*, WIPO Case No. [D2006-1373](#)).

Finally, even when taking account the fact that the Domain Name currently resolves to an inactive webpage, the mere inactivity of this webpage does not lead to a different finding. It is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the reputation of the Trademarks, the confusing similarity between the Domain Name and the Trademarks, and the content of the webpage to which the Domain Name resolves, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks.

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 <fioricci.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: September 14, 2023