

ADMINISTRATIVE PANEL DECISION

Futureal Development Holding v. Philip Chu, Transpacific Financial Inc
Case No. D2024-0382

1. The Parties

The Complainant is Futureal Development Holding, Hungary, represented by CMS Cameron McKenna Nabarro Olswang LLP, United States of America (“United States”).

The Respondent is Philip Chu, Transpacific Financial Inc, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 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 (not available) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 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 amendment to the Complaint on February 5, 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 the Respondent of the Complaint, and the proceedings commenced on February 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 29, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 5, 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 Hungarian company that focuses on income-produce real estate through various related-companies, one of which is Futureal Management Szolgáltató Ltd., operator of the domain name <futurealgroup.com>. According to the website available at such domain name, the Complainant's group has become a significant player in the European real estate market, counting with a team of over 400 professionals involved in large-scale mixed-use urban development projects, residential, retail, office, industrial and logistics developments, and investments.

The Complainant is the owner of the following, amongst other, trademark registrations:

- Hungarian trademark registration No. 189983, for the word mark FUTUREAL, filed on February 20, 2006, registered on June 22, 2007, successively renewed, in classes 1-24, 26-45;
- International trademark registration No. 1456286, for the word mark FUTUREAL, registered on October 19, 2018, in classes 36, 37 and 42; and
- European Union trademark registration No. 015577381, for the word mark FUTUREAL, filed on June 23, 2016, registered on October 10, 2016, in classes 36, 37 and 42.

The disputed domain name was registered on December 22, 2023, and presently does not resolve to an active webpage.

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 Complainant's trademark is entirely reproduced in the disputed domain name, being the likelihood of confusion enhanced by the prior <futurealgroup.com> domain name registered by one of the companies pertaining to the Complainant's group.

As to the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Complainant contends that: (i) the disputed domain name falsely suggests an affiliation with the Complainant and its trademark; (ii) the Respondent does not hold any rights or legitimate interests over the disputed domain name; and (iii) given the fact that the Complainant recently experienced a highly sophisticated security breach around the same time of the registration of the disputed domain name, the Complainant claims that the disputed domain name has not been registered for legitimate purposes.

Lastly, in what it relates to the registration of the disputed domain name in bad faith, the Complainant asserts that the (i) given the nature of the disputed domain name (i.e., incorporating the entirety of the Complainant's trademark plus an additional term similar to a domain name held by a subsidiary of the Complainant); (ii) the choice of a similar generic Top-Level Domain ("gTLD"); (iii) the timing and circumstances of the registration of the disputed domain name (i.e., following a highly sophisticated security breach) and (iv) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the only possible finding for the registration of the disputed domain name having occurred in bad faith; not being the non-use of the disputed domain name capable of preventing a finding of bad faith use under the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms ("gruop") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

In that sense, the Complainant has indeed stated the Respondent does not hold any rights over the disputed domain name, there not being, according to the evidence submitted, any indication that the Respondent, named Philip Chu, Transpacific Financial Inc, has been commonly known by the disputed domain name, nor has it ever sought or received authorization or a license to use the Complainant's trademark in any way or manner.

The composition of the disputed domain name, which reproduces the entirety of the Complainant's trademark, with the addition of the term "gruop", which is typo from the term "group" used by the Complainant's subsidiary in an almost identical domain name, <futurealgroup.com>, shows Respondent-s intention of taking an unfair advantage of the similarity with the Complainant's domain name and thus, cannot confer rights or legitimate interests in the disputed domain name.

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.

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.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the composition of the disputed domain name reproducing the entirety of the Complainant's trademark and differing by a single letter to the Complainant's subsidiary prior domain name;
- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name; and
- c) the present non-use of the disputed domain name which does not prevent a finding of bad faith under the doctrine of passive holding ([WIPO Overview 3.0](#), section 3.3)

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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 <futurealgruop.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: March 19, 2024