

## **ADMINISTRATIVE PANEL DECISION**

Fortenova Grupa d.d. v. “S.P.”

Case No. D2022-0666

### **1. The Parties**

The Complainant is Fortenova Grupa d.d., Croatia, represented by Denneweyer & Associates S.A., Croatia.

The Respondent is “S.P.”, Croatia.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 March 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2022. The Response was filed with the Center on March 7, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 2, 2022. 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**

Headquartered in Zagreb, Croatia, the Complainant is a Croatian holding company comprising companies in Croatia and the Western Balkans region. The Complainant has over 50,000 employees and operates in three core activities, namely agriculture, retail, and food. The Complainant's retail network includes 2,500 points of sale and 39,000 employees working in five markets across the Balkan region. Its companies include Koznum, Mercator, and Zvijezda. Koznum is Croatia's largest supermarket chain, having over 700 stores in Croatia, 10,000 employees, and further stores in Bosnia and Herzegovina and in Serbia. Koznum serves 650,000 customers each day. Mercator is Slovenia's largest retail chain. Zvijezda is the largest producer of edible oils in Croatia. The Complainant owns and operates websites at multiple domain names including <fortenovagrupa.hr>, <fortenovagroup.hr>, <fortenova.com>, and <fortenova.hr>.

The Complainant was previously known under the name of Agrokor d.d. and its change of name and new name were made public on February 28, 2019, to take effect from April 1, 2019. The Complainant's announcement was featured in the Croatian media, and has been evidenced to the Panel by an entry on the Croatian State Television (HRT) News website on February 28, 2019.

The Complainant is the owner of several European and international trademarks that consist of the mark FORTENOVA GRUPA including, for example, European Union Trade Mark no. 18038559 for a figurative mark consisting of the words FORTENOVA GRUPA in blue on a square green background together with a graphic design to the left of the word element. Said mark was filed on March 21, 2019, and registered on July 19, 2019, in Classes 31, 35, 36, 37, and 39.

The disputed domain name was registered on February 28, 2019. The Respondent is an individual with an address in Zagreb, Croatia. According to a screenshot produced by the Complainant and not disputed by the Respondent, the website associated with the disputed domain name consists of a single page featuring the name of the current Croatian Prime Minister.

Extracts of correspondence between the Parties have been supplied by the Complainant. Neither of the Parties offered a translation of these into the language of the administrative proceeding, and the Panel has therefore machine-translated them from the Croatian language. In an undated letter by the Respondent to the Complainant (though possibly this is the document entitled "obavijest\_domena" which accompanied the Respondent's email of August 21, 2020) the Respondent sets out agreed terms for the purchase of the disputed domain name including a proposed purchase price of EUR 250,000 and a deadline of August 25, 2020.

Dated emails between the Respondent and representatives of the Complainant between June 1, 2020, and August 21, 2020, discuss a potential purchase of the disputed domain name. In an email dated June 29, 2020, the Respondent indicates that it has interested third parties and asks the Complainant to get in touch if it is interested. In an email dated July 6, 2020, the Respondent states that the disputed domain name is still available and that it is already in negotiations with an interested third party, adding [according to the Panel's machine translation] "It's high time you get in touch if you're thinking about owning it."

#### **5. Parties' Contentions**

##### **A. Complainant**

In summary, the Complainant contends as follows:

##### **Identical or confusingly similar**

The disputed domain name is identical to the Complainant's FORTENOVA GRUPA trademark and its official domain name <fortenovagrupa.hr>, as it wholly incorporates the words "FORTENOVA GRUPA". The

addition of the generic Top-Level-Domain (“gTLD”) “.com” does not have any impact. The disputed domain name is therefore identical to the Complainant’s trademark.

### **Rights or legitimate interests**

The Respondent does not hold any rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise authorized the Respondent to use its trademark or to apply for any domain name incorporating the trademark. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, as the website consists of a single page with the name of the current Croatian Prime Minister on it. The Respondent’s name does not coincide with the disputed domain name and there are no other holders of rights to the name “Fortenova Grupa” in trademark offices or the registry of companies.

### **Registered and used in bad faith**

The disputed domain name incorporates the Complainant’s mark in its entirety and falsely gives the impression that the website to which the disputed domain name directs is authorized by or connected to the Complainant. The Complainant is well-known in its field of activity and the Respondent had knowledge of the Complainant’s rights when it registered the disputed domain name. The date of registration of the disputed domain name coincides with the publication on Croatian State Television News of the Complainant’s new name. This is not a coincidence.

The Complainant was previously contacted by the Respondent, “S.P.”, a Croatian citizen, who presented himself as the owner of the disputed domain name. During the summer of 2020, the Respondent contacted the Complainant offering to sell the disputed domain name for EUR 250,000. The offer should be considered as obvious evidence that the registration and use of the disputed domain name is in bad faith as it indicates that the disputed domain name has been registered primarily for the purpose of selling, renting, or otherwise transferring it to the owner of the trademark (the Complainant) for valuable consideration in excess of the Respondent’s out-of-pocket costs directly related to the disputed domain name.

### **B. Respondent**

The Respondent contends as follows:

The Respondent requests that the Complaint be denied.

The Respondent describes itself as a political activist and a data protection expert in Croatia who fights against Russian capital in Croatia. The Respondent states that although it is being presented by the Complainant as having an alias, it has publicly changed its name for religious reasons and is not hiding anything. The Respondent notes that it has been monitoring Russian capital in Croatia since 2008 and was a political figure in a Croatian anti-corruption party. The Respondent claims to be the organizer of successful anti-corruption protests and involved with a documentary film concerning the former owner of the Complainant.

The Respondent asserts that the disputed domain name was registered “way earlier than [the Complainant] changed name to their company or had any trademark on it.” It submits that “fortenova” and “grupa” are generic terms and that the disputed domain name was previously registered to a Spanish company, as it has noted from the Internet Archive, asserting further that this domain name now points to a phishing website. The Respondent claims that it has been tasked with “doing projects which can undermine or litigate Russian interests in South-Eastern Europe” and that the disputed domain name was registered “with sole intention to inform public regarding shady Russian business in Croatia with main goal of litigation – putting pressure on Russian interests in Croatia.”

The Respondent notes that it has never used the Complainant’s name, figurative mark, colors or logo, and has not offered misleading services, information, or redirections. The Respondent adds that it has made no

claim that the website associated with the disputed domain name is the Complainant's official site or is otherwise connected to it and that the sole purpose of its registration of the disputed domain name is to criticize Russian actions in Croatia "in activistic pro-democratic way."

The Respondent asserts that the Complainant contacted it many times with regard to purchasing the disputed domain name, adding that the Complainant made the initial approach and that the Complainant has offered money through intermediaries in "very violent manners". The Respondent asserts that the Complainant is a Russian-owned company which wishes to disable the Respondent's political work. The Respondent claims to have been physically assaulted by the Complainant's personnel at the Complainant's headquarters, in respect of which civil and criminal actions are pending or will be commenced shortly, and that video evidence of the incident is available.

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

### **A. Identical or Confusingly Similar**

The first element inquiry under the Policy is typically conducted in two parts. First, the Panel considers whether the Complainant has UDRP-relevant rights in a trademark. Secondly, any such trademark is compared to the domain name concerned, typically in a straightforward side-by-side comparison, usually disregarding the gTLD as required for technical reasons. If, on such comparison, the domain name concerned is alphanumerically identical to the trademark, identity will generally be found. Equally, if the trademark is recognizable in the domain name concerned, confusing similarity will generally be found.

In the present case, the Complainant has cited a variety of registered trademarks, including the one listed in the factual background section above. This mark is figurative in nature and consists of word and design elements. The latter elements are typically disregarded for the purpose of assessing identity or confusing similarity under the Policy unless they comprise the dominant portion of the relevant mark, such that they effectively overtake the textual elements in prominence (see section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the present case, the design element consists of a background square and a radiating design to the left of the words FORTENOVA GRUPA. The design appears to be intended to actually highlight the words, and does not overtake them in prominence. The Panel is therefore satisfied that the word elements are capable of being separated from the design element. For completeness, the Panel notes that it is not of any significance for the purposes of the first element analysis under the Policy that the registration date of the trademark concerned post-dates the date of registration of the disputed domain name, although it may be relevant to the second and/or third element discussions.

Turning to the comparison exercise, it may be seen that the disputed domain name is alphanumerically identical to the word component of the Complainant's figurative mark, having excluded the gTLD (in this case, ".com") and ignoring the absence of a space between the two words in the disputed domain name, as spaces are not permitted in domain names for technical reasons.

In all of these circumstances, the Panel finds that the disputed domain name is identical to the Complainant's trademark and that the Complainant has carried its burden with regard to the first element of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (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 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 consensus of previous UDRP decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Complainant seeks to establish such *prima facie* case by reference to its submissions that it has given no authorization to the Respondent to use its trademark in a domain name, that there is no evidence of any legitimate noncommercial or fair use of the disputed domain name, that the Respondent does not appear to be commonly known by the disputed domain name, and that it has identified no other holders of rights to the name "Fortenova Grupa". In the Panel's opinion, these submissions are sufficient to establish the requisite *prima facie* case. Accordingly, the Panel turns to the Respondent's case to determine whether it has brought forward suitable evidence of such rights or legitimate interests.

The Respondent's case is that the disputed domain name was registered in consequence of its political activism and is intended for use "with sole intention to inform public regarding shady Russian business in Croatia with main goal of litigation – putting pressure on Russian interests in Croatia." Although the Panel has no reason to dispute the Respondent's claim to be a political activist, and putting aside for a moment that it is identical to the Complainant's mark (which by itself is fatal to the Respondent's case, see [WIPO Overview 3.0](#) section 2.5.1), there is no evidence that it acquired the disputed domain name for the purposes of noncommercial criticism. For example (again putting aside the identity issue), while a brief Internet search by the Panel shows some stories about non-controlling interests in the Complainant by Russian banks, the website at the disputed domain name contains no relevant content which would support the Respondent's assertions other than (according to the Complainant) stating the name of the current Croatian prime minister. This reference is too cryptic for the Panel to find that it supports the Respondent's assertions in the circumstances of the present case.

The Respondent's case regarding noncommercial criticism is moreover at odds with its evident attempts to sell the disputed domain name to the Complainant at a substantial price, which it neither seeks to deny nor to explain. The Panel reasonably infers that a political activist such as the Respondent, intent upon exposing alleged corruption, would not normally be expected to seek to take the money of the alleged perpetrator of such corruption. While the Respondent indicates that it has been threatened and intimidated into discussing a transfer of the disputed domain name, the unchallenged correspondence placed before the Panel suggests

otherwise. Its general tenor reveals that it is the Respondent which is pushing for a sale, particularly bearing in mind the references to negotiations with interested third parties and persistent encouragement for the Complainant's representatives to get in touch.

Finally, the Panel notes that the Response is self-contradictory as far as the Respondent's motivations in registering the disputed domain name are concerned. On the one hand, the Respondent puts forward the political activism case discussed earlier, whereby, on its own account, it is targeting the Complainant directly (albeit for the claimed purpose of noncommercial criticism). On the other, it states that the disputed domain name was acquired because it constitutes a combination of dictionary terms. Either of these matters, if put forward as the Respondent's sole case in appropriate circumstances, and if suitably evidenced, might have raised the specter of legitimate interests of the Respondent, but they could not do so together. Neither has been adequately evidenced in this case, and, insofar as they are put forward together as defenses to the Complaint, they are mutually inconsistent.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case that it has no rights and legitimate interests in the disputed domain name and accordingly that the Complainant has carried its burden with regard to the second element under the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

The Complainant's case is that the Respondent registered the disputed domain name with intent to sell it to the Complainant in terms of paragraph 4(b)(i) of the Policy. The Respondent's case is alternately that the disputed domain name was acquired well before the Complainant acquired any trademark rights in such term because it represents a combination of generic terms and/or was acquired for the purposes of political activism against businesses such as that of the Complainant. The apparent inconsistencies between on the one hand acquiring a domain name independently of the Complainant and on the other registering it to target the Complainant through political activism have already been discussed in the preceding section.

Nevertheless, it is important to address the Respondent's submission that the disputed domain name was registered prior to the Complainant's trademark rights coming into existence. The general proposition as to whether bad faith may be found where a domain name was registered before a complainant acquired trademark rights is set out in paragraph 3.8.1 of the [WIPO Overview 3.0](#). This states that, subject to certain scenarios described in paragraph 3.8.2, where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent, albeit that this would not impact a panel's assessment of a complainant's standing under the first UDRP

element. Paragraph 3.8.2 sets out an exception to the general proposition described in paragraph 3.8.1 where, in certain limited circumstances, the facts of the case establish that the respondent's intent in registering the domain name was unfairly to capitalize on the complainant's nascent (typically as yet unregistered) trademark rights.

In the Panel's opinion, this exception to the general proposition applies in the present case. The Respondent registered the disputed domain name on exactly the same day as the announcement of the Complainant's change of name, strongly suggesting that the registration event is very closely linked to the timing of the Complainant's announcement. Given the Respondent's subsequent dealings with the Complainant, including a demand for EUR 250,000 in return for a transfer of the disputed domain name, coupled with persistent encouragement to complete a sale, the Panel considers on the balance of probabilities that the Respondent registered the disputed domain name with intent to capitalize on the Complainant's nascent and as yet unregistered trademark rights.

The Respondent asserts that the Complainant approached it on multiple occasions and even used threats with regard to seeking a transfer of the disputed domain name. None of this has been evidenced by it. In any event, the fact that the Complainant might have made the first approach is not of any significance in the specific circumstances of the present case. The Complainant was in the position where it had recently changed its name to "Fortenova Grupa" and was looking to register the corresponding domain name. It found that the disputed domain name was registered on the day and possibly even at the time of the public announcement of its new name. In that event, it should not be particularly surprising that the Complainant chose to approach the registrant of the disputed domain name seeking an explanation and a discussion regarding its transfer. Set against the factual background of this case, the Respondent's suggestion that the disputed domain name was registered independently of the Complainant's activities because it represents a generic or dictionary term may be discounted not only because the allegedly generic nature has not been evidenced but also because it is a far less plausible explanation than the alternative, namely that this was a deliberately targeted action.

In conclusion, the Panel finds that the circumstances of the registration and use of the disputed domain name in this case are strongly indicative of opportunistic cybersquatting of the kind which the Policy was created to address. The facts are consistent with the Respondent having registered the disputed domain name primarily for the purpose of selling it to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related thereto, being evidence of registration and use in bad faith in terms of paragraph 4(b)(i) of the Policy. In this context, the assertion that the Respondent is conducting a political campaign against businesses such as the Complainant does not exculpate the Respondent or shield it from the general thrust of the Policy.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and that the Complainant has carried its burden in terms of the third element under 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 <fortenovagrupa.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: May 16, 2022