

ADMINISTRATIVE PANEL DECISION

fischertechnik GmbH v. See PrivacyGuardian.org, Domain Administrator / Tom Rogan / Corporate Brand Protection, DNS Admin
Case No. D2022-1415

1. The Parties

The Complainant is fischertechnik GmbH, Germany, represented by HK2 Rechtsanwälte, Germany.

The Respondent is See PrivacyGuardian.org, Domain Administrator, United States of America / Tom Rogan, United Kingdom / Corporate Brand Protection, DNS Admin, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <fischertip.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 April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 2022, 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 May 2, 2022.

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 May 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 27, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on June 10, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a German company active in the construction kit and in the educational toy sector. The Fischer Group promotes their products in different languages worldwide on the Internet, *inter alia* at “https://www.fischer.de/” and “https://www.fischertechnik.de/”. Under the trademark FISCHERTIP, the Complainant produces and sells creative toys and craft supplies, and promotes them on the Internet under “https://www.fischertip.de/en/”. The Complainant holds numerous trademarks worldwide for FISCHER, such as a registration with the European Union Intellectual Property Office (EUIPO) trademark registration No. 010690774 registered in 2010, claiming the seniority of Austrian trademark registration no. 665041 registered on September 18, 1996. The Complainant also has registered the trademark FISCHERTIP, see Chinese registration no. 13425101 registered January 21, 2015. The Complainant also has registered the trademark TIP, see International Trademark registration no. 737049 registered on May 23, 2000.

The Domain Name was registered on July 6, 1999. According to the Complaint, the Complainant was the holder of the Domain Name until August 2021, but lost it as a consequence of losing login data. At the time of filing the Complaint, the Domain Name resolved to a webpage that offers domain names for sale, including the Domain Name.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations, and argues that the FISCHER trademark is a well-known mark. The Domain Name is identical to the Complainant's trademark FISCHERTIP and confusingly similar to the Complainant's trademark FISCHER.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark, and the Respondent is not commonly known by “fischer”, “tip” or “fischertip”. The Respondent cannot establish rights in the Domain Name, as it has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent has been actively trying to sell the Domain Name through a domain purchase platform, and by making an unsolicited purchase offer to the Complainant. A noncommercial or fair use of the Domain Name by the Respondent is not cognizable.

The Complainant argues that the Respondents must have been aware of the Complainant and its trademarks when the Respondent registered the Domain Name. This is apparent from the unsolicited offer for sale to the Complainant. The Respondent is offering the Domain Name publicly for sale. The Respondent has never actively used the Domain Name. Non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding as the Complainant's trademark is distinctive and of strong reputation, the Respondent conceals his identity and the Domain Name cannot be used in good faith. The Respondent has not only used a privacy service but is disguising his identity by providing false/inconsistent registrant information.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademarks FISCHER, TIP, and FISCHERTIP. The test for confusing similarity involves a comparison between the trademark and the Domain Name. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domains (“gTLDs”), see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is identical and confusingly similar to trademarks in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant’s trademark or otherwise make use of the Complainant’s mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired any other rights in a name corresponding to the Domain Name. The Respondent has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. The Respondent has been trying to sell the Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant was the holder of the Domain Name until August 2021. Based on the unsolicited offer for sale to the Complainant, the Panel finds it likely that the Respondent must have been aware of the Complainant and its trademark when the Respondent acquired the Domain Name. Moreover, the composition of the Domain Name suggests that the Respondent was aware of the Complainant when acquiring the Domain Name. The Panel finds more likely than not that the Respondent has registered and is holding the Domain Name due to its value and significance as the trademarks owned by the Complainant.

Moreover, the Respondent is offering the Domain Name publicly for sale, and the Respondent has never actively used the Domain Name. Under the circumstances of this case, it points to bad faith. The non-use of the Domain Name does not prevent a finding of bad faith as the Respondent has made an unsolicited offer to sell the Domain Name to the Complainant. Moreover, the Respondent has used a privacy service and provided false/inconsistent registrant information.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <fischertip.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: June 22, 2022