

ADMINISTRATIVE PANEL DECISION

Food Fighters Universe LLC v. Protection of Private Person / Evgeniy Kalinin Case No. D2022-2448

1. The Parties

The Complainant is Food Fighters Universe LLC, United States of America (“United States”), represented by The Myers Law Group, United States.

The Respondent is Protection of Private Person, Russian Federation / Evgeniy Kalinin, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <foodfighteruniverse.com> (the “Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 7, 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 July 8, 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 amended Complaint on July 11, 2022.

On July 8, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on July 12, 2022. The Respondents did not comment on the language of the proceeding.

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 the Respondent of the Complaint in both English and Russian, and the proceedings commenced on July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on August 29, 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

The Complainant was founded in 2022 by Kevin Seo, Phillip Huynh, and Andy Nguyen. It is a company which plans to sell a collection of non-fungible tokens ("NFTs") on the Ethereum blockchain. These NFTs will relate to food, beverages, costumes, weapons and utensils.

The Complainant claims common law rights in the FOOD FIGHTERS UNIVERSE trademark ("Trademark").

The Complainant has filed several applications for the registration of the Trademark, including:

- the application for the United States Trademark Registration for FOOD FIGHTERS UNIVERSE No. 97440387 submitted on June 2, 2022;
- the application for the United States Trademark Registration for FOOD FIGHTERS UNIVERSE No. 97440404 submitted on June 2, 2022;
- the application for the United States Trademark Registration for FOOD FIGHTERS UNIVERSE No. 97440413 submitted on June 2, 2022.

The Complainant's official domain name incorporating the Trademark is <foodfightersuniverse.com>. The Complainant promotes its products and services through the website associated with its official domain name since January 2022.

The Domain Name was registered on June 14, 2022.

At the time of drafting the Complaint, the Domain Name resolved to the website offering purported Complainant's NFTs in exchange for Ethereum cryptocurrency ("Website"). As of the date of this Decision, the Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the Trademark in which it has common law rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

(i) the 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 the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends that the Domain Name consists of English words written in Latin script. Additionally, the content of the Website is also written in English using Latin script.

The Panel considers that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the language of the proceeding, even though it was notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant relies on its common law rights in the Trademark. It is constant that the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered trademarks. See section 1.1, [WIPO Overview 3.0](#). To establish unregistered or common law trademark rights for purposes of the UDRP, the Complainant must show that its trademark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services. See section 1.3, [WIPO Overview 3.0](#).

The Panel considers that the Complainant demonstrated such acquired distinctiveness. In this regard, the Panel notes that the Complainant has used and extensively advertised its goods and services using the Trademark since at least January 2022. Since then the Trademark has been acquiring rapid recognition due to a significant Internet presence. Moreover, the Trademark has received significant media coverage.

In consequence, the Panel concludes that the Complainant has common law trademark rights in the Trademark for purposes of the UDRP.

The Domain Name consist of a misspelling of the Trademark. The letter “s” has been deleted in the word “fighters”. As numerous UDRP panels have held, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark. See [WIPO Overview 3.0](#), section 1.9.

The generic Top-Level Domain (“gTLD”) “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Trademark in which the Complainant has common law rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. 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 respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s common law rights in the Trademark predate the Respondent’s registration of the Domain Name. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondent to use the Trademark or to

register the Domain Name incorporating this Trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

On the contrary, the Domain Name is used to attract Internet users to the Website which purportedly offers to mint NFTs in exchange for Ethereum cryptocurrency so that they can be used for the Complainant's products and services, such as the digital games. However, none of the NFTs allegedly sold by the Respondent are compatible with the Complainant's products and services. Thus, the Respondent either has no intention of minting NFTs or it mints NFTs which have no functionality for the Complainant's products and services.

Moreover, the Website features links to the Complainant's Discord channel or Twitter account. In this way the Respondent intends to suggest an association with the Complainant, when in fact it has none. Such use of the Domain Name certainly does not confer rights or legitimate interests on the Respondent.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's common law rights in the Trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's Trademark at the time of registration of the Domain Name. This finding is supported by the content of the Website suggesting association with the Complainant. Moreover, it has been proven to the Panel's satisfaction that the Complainant's Trademark is already well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this

Trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Trademark in which the Complainant has common law rights.

Moreover, the Complainant presented evidence that the Domain Name is used in bad faith by the Respondent to attract Internet users to the Website. Thus, this Panel finds that the Respondent uses the Domain Name in an attempt to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the Website or the activity carried out through this Website by the Respondent.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under 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 <foodfighteruniverse.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: September 12, 2022