

ADMINISTRATIVE PANEL DECISION

Freemont Management SA v. Privacy service provided by Withheld for Privacy ehf / Afsar Ahmed Choudhury
Case No. D2022-2501

1. The Parties

The Complainant is Freemont Management SA, Switzerland, represented by Sedin S.A., Switzerland.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Afsar Ahmed Choudhury, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <freemontmsa.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 8, 2022. On July 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 12, 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 July 14, 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 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 formal response. The Respondent sent informal communications to the Center on July 22, 2022, and on August 3, 2022. The Center notified the Parties that it would proceed with the panel appointment process on August 12, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on August 25, 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 incorporated in 1994, and adopted the name Freemont Management SA in November 2016. It offers asset management and investment advisory services, and manages institutionally-sized assets and invests in all traditional and alternative asset classes, including traditional markets, derivatives, hedge funds and private equity. The Complainant is supervised by the Swiss Financial Market Supervisory Authority (“FINMA”), and has been authorized as a manager of collective investment schemes since April 12, 2019.

The Complainant is the owner of the Swiss trademark FREEMONT with registration No. 781924, registered on May 30, 2022, for services in International Classes 35 and 36.

The Complainant is also the owner of the domain name <freemont.com> registered on April 25, 2022, which refers to its official website. The Complainant is also the owner of domain names <freemont.ch>, registered on September 12, 2005, <freemontmanagement.ch>, registered on October 11, 2016, and <freemontmanagement.com>, registered on October 11, 2016.

The disputed domain name was registered on March 26, 2021. It resolves to a website that offers investment opportunities and brokerage services.

On May 17, 2022, the Respondent registered the company Freemont Management SA Ltd with Company Number 14111395 in the United Kingdom.

On March 31, 2022, the Complainant filed a criminal complaint in Switzerland against the Respondent’s website on the basis of cybersquatting. On June 9, 2022, the Complainant filed a report with Action Fraud (National Fraud & Cyber Crime Reporting Center) in the United Kingdom. On June 23, 2022, the Complainant filed an application to the Company Names Tribunal in the United Kingdom requesting a change of name of the Respondent’s company Freemont Management SA Ltd. There is no information in the case file about the present situation with these proceedings.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to its FREEMONT trademark, because it incorporates this trademark in its entirety. According to the Complainant, the letters “msa” in the disputed domain name refer to “management SA”, where “management” refers to the purpose of the company (*i.e.*, managing assets) and “SA” is the acronym of “société anonyme” which means “limited company” in French. According to the Complainant, this is a direct reference to the full business name of the Complainant – Freemont Management SA, and this strengthens the confusing similarity with the Complainant’s trademark. The Complainant also points out that the website under the disputed domain name introduces the Complainant (Freemont Management SA) as being its operator, and offers financial services related to those designated under the Complainant’s trademark, namely financial services offered by a regulated entity under the laws of Switzerland. According to the Complainant, this shows that the Respondent sought to target the trademark of the Complainant through the disputed domain name and registered it because it believed that it was confusingly similar to the Complainant’s FREEMONT trademark, with an abusive intent to confuse Internet users.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it was not commonly known by the customers of the financial sector with the name "freemont" at the time of the registration of the disputed domain name and has no rights in this word. The Complainant adds that the Respondent is neither in any way affiliated with the Complainant nor has it received any authorization or license from the Complainant to use the FREEMONT trademark or to register it as a domain name.

The Complainant submits that the Respondent has carried out no activity under the FREEMONT trademark before the registration of the disputed domain name, and has not used the disputed domain name in connection with a *bona fide* offering of goods and services or carried out a legitimate noncommercial or fair use of the disputed domain name. Rather, it intends to misleadingly divert consumers for commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant maintains that the FREEMONT trademark is associated to the long-standing expertise and excellent reputation of the Complainant in its niche market of the financial sector. According to it, the Respondent must have been aware of the Complainant's FREEMONT trademark at the time of the registration of the disputed domain name, due to the serious and long-term position of the Complainant in the financial sector and given the fact that this sector is a niche market with a limited number of competitors.

According to the Complainant, by using the disputed domain name, the Respondent intentionally attempts to attract for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's FREEMONT trademark.

The Complainant points out that the Respondent's bad faith conduct is shown by the content of the website at the disputed domain name. It reproduced the name and contact details of the Complainant and contained many references to the Complainant's exact company name, legal entity identifier, phone number and physical address in Switzerland, as well as to its President and CEO, whose name was used as part of an email address at the disputed domain name. The Complainant also points out that the website at the disputed domain name offers financial services that are related to those protected under the trademark FREEMONT. According to the Complainant, the above shows that the intention of the Respondent is to create a likelihood of confusion with the Complainant and its trademark to attract for commercial gain Internet users to its website.

The Complainant further submits that the Respondent removed the indications referring to the Complainant from its website after the Complainant requested the restriction of access to this website by the web hosting provider. Nevertheless, the Respondent's website still refers to the Complainant's address and legal entity identifier in its Terms of Use. The "FAQ" page of the website mentions that documents proving the identity of investors should be provided in order to verify their account, such as passport, ID or driver's license. Documents proving the place of residence of investors such as a passport or an extract of a bank account should also be provided. The Complainant concludes that through its website, the goal of the Respondent is to drive Internet users to invest their money with the expectation to receive an income from trading.

The Complainant states that the fact that the Respondent registered the disputed domain name before the Complainant registered its trademark FREEMONT should not prevent to establish the Respondent's bad faith. According to it, the Respondent's conduct shows that it had the Complainant in mind when it registered the disputed domain name and had the intention to create a likelihood of confusion with the Complainant's trademark to attract for commercial gain Internet users to its website where services similar to those of the Complainant are offered.

B. Respondent

The Respondent did not submit a formal response.

In its informal response, the Respondent points out that it has another company with a different, even if similar, name and with a different abbreviation.

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainants must prove each of the following to justify the transfer of the disputed domain name:

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

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the FREEMONT trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” TLD section of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence “freemontmsa”, which reproduces the FREEMONT trademark entirely with the addition of the letters “msa”. The FREEMONT trademark is easily recognizable in the disputed domain name. As noted by the Complainant, these three letters may be understood as an abbreviation of “management société anonyme” and thus as a reference, in their combination with “freemont”, to the complete name of the Complainant. Nevertheless, since the FREEMONT trademark is recognizable within the disputed domain name, even if this three-letter combination is regarded as meaningless, its addition to “freemont” in the disputed domain name would not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#).

In view of the above, the Panel finds that the disputed domain name is confusing similar to the FREEMONT trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not used it in connection with a *bona fide* offering of goods or services, is not commonly known by the disputed domain name, and has not been authorized by the Complainant to use the FREEMONT trademark or to register the disputed domain name. The Complainant points out that the Respondent operates a website at the disputed domain name that appears as belonging to the Complainant in an attempt to confuse and attract Internet users and offer them services that are similar to those of the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent's only argument in this proceeding is that it has a company registered in the United Kingdom under the name Freemont Management SA Ltd. It is also important to note that the FREEMONT trademark was registered after the registration of the disputed domain name. The Panel will analyze these two elements of the case in light of the other relevant circumstances.

The disputed domain name is confusingly similar to the FREEMONT trademark and to the Complainant's company name, and the evidence in the case file shows that it resolves to a website that offers investment opportunities and brokerage services, which are similar to the services provided by the Complainant.

As shown by the evidence submitted by the Complainant and not disputed by the Respondent, the website has until recently contained a number of direct references to the Complainant as being the entity providing the services offered on the website. This included the exact name of the Complainant (Freemont Management SA), its business address and phone number in Switzerland, its Swiss legal entity identifier, and an email address composed of the name of the Complainant's President and CEO. There was no disclaimer for the lack of relationship with the Complainant and no correct indication of the full name of the Respondent's company (Freemont Management SA Ltd.) on the website.

The evidence also shows that after the Complainant requested the deactivation of the Respondent's website in May 2022, some of these references were removed from the Respondent's website and replaced by reference to the Respondent's United Kingdom company.

Nevertheless, the Terms of Use Agreement for the use of the brokerage services offered on the Respondent's website continue to indicate the Complainant with its name, business address in Switzerland and Swiss legal entity identifier as the provider of these brokerage services, and neither the Respondent's website, nor the Terms of Use Agreement contain any disclaimer for the lack of relationship between the Respondent's United Kingdom company and the Complainant.

The above elements of the case satisfy the Panel that the Respondent knew the Complainant and targeted it when registering the disputed domain name, and has registered and used it in an attempt to impersonate the Complainant and deceive Internet users that the website at the disputed domain name is operated by the Complainant and that the investment opportunities and the brokerage services offered on this website are offered by the Complainant. It is also likely that this was done with the expectation to receive an income from trading. The Panel does not regard such conduct as legitimate or giving rise to rights or legitimate interests of the Respondent in the disputed domain name. The fact that the FREEMONT trademark was registered after the disputed domain name does not change the above conclusion, because the evidence shows that the Respondent targeted the Complainant.

The existence in the United Kingdom of the Respondent's company under the name Freemont Management SA Ltd may in principle and taken in isolation from the other circumstances of this case support an argument that the Respondent is known under a name corresponding to the disputed domain name and thus have rights or legitimate interests in it. However, its registration was made only in May 2022 – more than one year after the registration of the disputed domain name and after the Complainant commenced criminal proceedings in Switzerland against the Respondent. Also, as discussed above, the Respondent's website until recently identified the Complainant as provider of the services offered on the Respondent's website, and this remains to be so in the Respondent's Terms of Use Agreement available on its website. In view of this, it appears to the Panel that the registration of the Respondent's company was more likely made not in good

faith but in an attempt to create an appearance of legitimacy of the Respondent's actions. Therefore, the Panel does not regard the existence of the Respondent's company as giving rise of rights or legitimate interests of the Respondent in the disputed domain name.

For all the foregoing reasons, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

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

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

In the present case, the FREEMONT trademark was registered after the disputed domain name. As discussed in sections 3.8.1 and 3.8.2 of the [WIPO Overview 3.0](#), 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. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

As discussed above in this decision, the disputed domain name is confusingly similar to the Complainant's FREEMONT trademark and to the Complainant's company name. It is being used for a website whose content until recently identified the Complainant as provider of the services offered on the website (and partly continues to do so) without disclosing the lack of relationship between the Parties. This website was activated with such content before the registration of the FREEMONT trademark, which shows that the Respondent knew of the Complainant and targeted it even before this trademark came into existence. In the circumstances, it is more likely that this targeting was done in an attempt to unfairly capitalize on the Complainant's goodwill for commercial gain by attracting Internet users to the Respondent's website and deceiving them that they are being offered brokerage services and investment opportunities by the Complainant itself.

This satisfies the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <freemontmsa.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 8, 2022