

ADMINISTRATIVE PANEL DECISION

Equifax Inc. v. Administrator, Modern Empire Internet Ltd.
Case No. D2022-3524

1. The Parties

The Complainant is Equifax Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Administrator, Modern Empire Internet Ltd., Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <eqfax.com> is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2022. On September 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on November 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

The Complainant has offered credit reference and other services under the mark EQUIFAX since 1975. It has over 11,000 employees worldwide.

The Complainant owns many trade marks for EQUIFAX including United States Registration No. 1,027,544, filed on March 10, 1975, registered on December 16, 1975, in class 36.

The Complainant operates its own website at "www.equifax.com".

The disputed domain name was registered on May 1, 2002.

As of September 22, 2022, the disputed domain name did not resolve to a website, but MX records had been configured enabling use of the disputed domain name for email.

The Respondent has been found to have registered and used domain names in bad faith in a number of cases under the Policy, e.g., *LIDL Stiftung & Co. KG v. Domain Administrator, Modern Empire Internet Ltd.*, WIPO Case No. [D2018-0523](#).

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant's trade mark is well known.

The disputed domain name is confusingly similar to the Complainant's trade mark. The disputed domain name simply omits the two letters "ui" and is a misspelling of the Complainant's trade mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to register the disputed domain name or to use its trade mark.

The Respondent has not resolved the disputed domain name for an active website and has therefore not used the disputed domain name for a *bona fide* offering of goods or services.

The Respondent has not been commonly known by the disputed domain name or acquired any trade mark rights in the disputed domain name. Nor has the Respondent made legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith.

The fact that the disputed domain name is similar to the Complainant's famous trade mark by itself creates a presumption of bad faith. It is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Respondent's actions suggest "opportunistic bad faith".

The disputed domain name constitutes a passive holding in bad faith, given the fame of the Complainant's mark and the implausibility of any good faith use.

The existence of MX records indicate the strong possibility that the Respondent intends to use the disputed domain name for phishing.

The Respondent has engaged in a pattern of bad faith registrations.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

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

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark EQUIFAX, as well as unregistered trade mark rights deriving from the Complainant's extensive and longstanding use of that mark.

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that a domain name which, as here, consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the disputed domain name is currently inactive and therefore not being used for a *bona fide* offering of goods or services.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, it is appropriate to consider this case under the principles of "passive holding".

Section 3.3 of the [WIPO Overview 3.0](#) explains that, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.

In this case, the Panel considers that the following cumulative circumstances are indicative of passive holding in bad faith:

- the distinctiveness and fame of the Complainant's mark;
- the fact that the disputed domain name comprises an obviously intentional misspelling of the Complainant's mark;
- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- the implausibility of any good faith use to which the disputed domain name may be put; and
- the fact that the Respondent has engaged in pattern of bad faith registrations.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 <eqfax.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: November 16, 2022