

ADMINISTRATIVE PANEL DECISION

FAME BROS Limited v. polo polo
Case No. D2022-3762

1. The Parties

The Complainant is FAME BROS Limited, China, represented by AARPI Scan Avocats, France.

The Respondent is polo polo, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <fame-bors.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 October 7, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 October 17, 2022.

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, and the proceedings commenced on October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on November 9, 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 is a limited company registered in Hong Kong, China. It is a supplier of textile products.

The Complainant trades under the name FAME BROS and claims unregistered trademark rights in that term in the circumstances set out below.

The disputed domain name was registered on August 29, 2022. It does not appear to have resolved to any active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that it was created in 2013 and now operates in Hong Kong, France and the United States. It refers to its principal website at "www.fame-bros.com" and states that it also does business under two sub-brands, "Cinereplicas" (which supplies, for example, licensed "Harry Potter" merchandise) and "Elly La Fripouille", although in both cases including reference to its primary FAME BROS mark. It submits evidence of a logo incorporating the term FAME BROS ("the Logo") which it states it uses extensively in business. It also states that it deals with over 1,500 independent stores worldwide. The Complainant submits evidence of business documentation, commercial brochures, physical store frontages and other examples of its use of the FAME BROS mark and the Logo. It also provides evidence of media and industry recognition of its brand and of a significant presence on social media, including both the FAME BROS mark and the Logo.

The Complainant submits that, as a result of these matters, it has obtained unregistered trademark rights in respect of the mark FAME BROS.

The Complainant submits that the disputed domain name is confusingly similar to its FAME BROS mark. It contends that the disputed domain name represents an obvious case of "typosquatting" as it differs from the trademark only by the reversal of the letters "o" and "r" in the term "bros" and the inclusion of a hyphen.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its FAME BROS trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is not making any *bona fide* commercial use of the disputed domain name. Instead, it submits that the Respondent has used the disputed domain name for the purpose of fraudulent "phishing" emails sent to its customers requesting the payment of invoices from them. It exhibits emails sent from the email address "[...].@fame-bors.com" to one of its customers requesting such payment. The emails include the Logo and references to the Complainant's FAME BROS mark and its "Cinereplicas" and "Elly La Fripouille" names.

The Complainant submits that the disputed domain name has been registered as is being used in bad faith. The Complainant contends that the mark FAME BROS is not a term in common usage and that the Respondent must have been aware of the Complainant's trademark when it registered the disputed domain name. The Complainant submits the Respondent has used the disputed domain name in a fraudulent manner to attempt to obtain money by impersonating the Complainant. It contends that there is no plausible reason for the Respondent to have registered the disputed domain name in good faith and that its intentions

are obvious from the fraudulent emails in question, which include for example the Logo. The Complainant adds that the Respondent has provided incomplete information concerning its identity in connection with the registration of the disputed domain name.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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

While the Complainant has no trademark registration for the mark FAME BROS, the Panel is satisfied on the evidence that the Complainant has obtained unregistered trademark rights in respect of that name. In particular, the Panel finds the name to be distinctive in nature, to have been used extensively by the Complainant in commerce and to have become recognized by consumers as designating the Complainant and its products.

The disputed domain name is identical to the Complainant's mark FAME BROS but for the reversal of the letters "r" and "o" in the term "bros" and the addition of a hyphen. On a straightforward side-by-side comparison, therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel finds, on the contrary, that the Respondent has used the disputed domain name fraudulently to impersonate the Complainant, which cannot give rise to rights or legitimate interests. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the Complainant's FAME BROS trademark to be distinctive in nature and that the Respondent has provided no explanation for its choice of the disputed domain name. The Panel therefore infers that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark and with the intention of "typosquatting" upon that trademark in order to take unfair advantage of the Complainant's goodwill.

It is plain from the evidence submitted by the Complainant that the Respondent has used the disputed domain name for the purpose of fraudulent email messages, pretending to be from the Complainant and seeking the payment of invoices from its suppliers. The disputed domain name impersonates both the Complainant's trademark FAME BROS and its URL at "www.fame-bros.com", and the emails sent by the Respondent impersonate the Complainant by, among other matters, including the Complainant's trademark, trading names and the Logo.

The Panel also finds that the registration details provided by the Respondent in connection with the disputed domain name are, on their face, incomplete and inaccurate.

The Panel therefore finds that the disputed domain name has been 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, <fame-bors.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: November 21, 2022