

## **ADMINISTRATIVE PANEL DECISION**

Fresenius Medical Care Deutschland GmbH v. Fresenius Healthcare  
Case No. D2022-4894

### **1. The Parties**

The Complainant is Fresenius Medical Care Deutschland GmbH, Germany, represented by Cantor Colburn LLP, United States of America.

The Respondent is Fresenius Healthcare, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <freseniushealthcare.com> is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 30, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2023 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 January 9, 2023.

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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on February 6, 2023. 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's parent company, Fresenius Medical Care AG & Co KGaA, has, since 1997 has been using the trademark FRESENIUS MEDICAL CARE since 1997 in connection with products and services for people with renal disease. It produces hemodialysis machines, and operates 42 productive sites in more than 20 countries. In 2021, its turnover was €17.6 billion (17.6 billion Euro).

The Complainant is the proprietor of a number of trademark registrations of the FRESENIUS MEDICAL CARE trademark, including US registration number 2302398, registered on December 21, 1999, and US registration number 4374671, registered on July 30, 2013.

The disputed domain name was registered on August 2, 2022, and currently resolves to an error page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant alleges that the disputed domain name is confusingly similar to its FRESENIUS MEDICAL CARE trademark.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, upon information and belief, the Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods or services or legitimate noncommercial or fair use. The Complainant states that it has never granted the Respondent permission to use its FRESENIUS MEDICAL CARE trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith. The Complainant has drawn the Panel's attention to an example of use of the disputed domain name in connection with an employment phishing scheme.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

- (i) the disputed 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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

##### **A. Confusing similarity**

The Panel finds that the Complainant has rights to its FRESENIUS MEDICAL CARE trademark for the

purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the “.com” gTLD, to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainant’s FRESENIUS MEDICAL CARE trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademark. The substitution of the word “medical” by its synonym “health” does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain names at issue.

## **B. Rights or Legitimate Interests**

The Panel considers that the Complainant’s allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

In the Panel’s opinion, the disputed domain name carries a serious risk of implied affiliation to the Complainant, and the example drawn to the Panel’s attention of use of the disputed domain name in connection with an employment phishing scam, in which employment positions in the Complainant’s company were offered, provides an egregious example of lack of legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainant’s FRESENIUS MEDICAL CARE trademark was deliberately appropriated in the disputed domain name are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with an employment phishing scheme constitutes use of the disputed domain name in bad faith, and, in the circumstances of the present case, the Panel so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 disputed domain name, <freseniushealthcare.com> be transferred to the Complainant.

*/George R. F. Souter/*

**George R. F. Souter**

Sole Panelist

Date: February 20, 2023