

ADMINISTRATIVE PANEL DECISION

FreedomPay, Inc. v. Privacy service provided by Withheld for Privacy ehf /
Black Anaconda, Capgimini
Case No. DCC2022-0005

1. The Parties

The Complainant is FreedomPay, Inc., United States of America (“U.S.”), represented by Cantor Colburn LLP, U.S.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Black Anaconda, Capgimini, India.

2. The Domain Name and Registrar

The disputed domain name, <freedompay.cc> (the “Domain Name”), is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2022. On April 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on April 25, 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 April 29, 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 May 2, 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 May 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2022.

The Center appointed Tony Willoughby as the sole panelist in this matter on May 30, 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the Domain Name was registered in the name of a privacy service. In response to the Center's registrar verification request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

4. Factual Background

The Complainant was incorporated in the U.S. in 2000 and has been using the name "FreedomPay" since 2006. It has been a pioneer of the technology behind the making of electronic payments. Its services are used by many global retailers and companies operating in a wide range of industries from hospitality to healthcare and financial services.

The Complainant operates a website connected to its domain name, <freedompay.com>, which was first registered on June 4, 1999.

The Complainant is the registered proprietor of U.S. Registration No. 5291903 FREEDOMPAY which was registered on September 19, 2017 (application filed on January 29, 2016) for a variety of goods and services in classes 9, 35 and 36. For the class 36 services (electronic commerce payment services) the registration bears a first use in commerce claim of November 22, 2006.

The Domain Name was registered on July 30, 2021 and was at the date of the Complaint connected to a website inviting use of the Respondent's Freedompay (sometimes spelt "Fredomepay") system enabling the "Sending [of] Money Globally Within A Few Minutes With Multiple Currency Just In a Few Clicks." Currently, the Panel has been unable to access the website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical or confusingly similar to the Complainant's FREEDOMPAY registered trade mark; that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Domain Name has been registered and is being used in bad faith.

The essence of the Complainant's case is that the Respondent registered the Domain Name with knowledge of the fame of the Complainant's FREEDOMPAY trade mark and the services provided by the Complainant under that mark and, with a view to deriving commercial gain, set out to impersonate or falsely associate itself with the Complainant, providing services substantially identical to some of the services provided by the Complainant.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights: and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name: and

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

B. Identical or Confusingly Similar

The Domain Name comprises the Complainant's registered trade mark, FREEDOMPAY, and the ".cc" Country Code Top-Level Domain identifier.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The Complainant's FREEDOMPAY registered trade mark is readily recognizable in its entirety in the Domain Name. The Panel finds that the Domain Name is identical to a trade mark in which the Complainant has rights.

C. Rights or Legitimate Interests

The Complainant asserts that it has no connection with the Respondent and has granted the Respondent no permission to use its FREEDOMPAY trade mark.

As indicated in section 5A of this Decision, the Complainant contends that the Respondent's purpose in registering the Domain Name was fraudulent, the Respondent's aim being to impersonate the Complainant and derive commercial gain from visitors to the Respondent's website. The Respondent's website is connected to the Domain Name, which is identical to the Complainant's domain name, <freedompay.com>, save for the Top-Level Domain identifier.

The Complainant supports its contentions with substantial evidence as to the international reputation and goodwill generated under and by reference to its FREEDOMPAY registered trade mark. The Complainant recites the circumstances set out in paragraph 4(c) of the Policy, any of which if found by the Panel to be present shall demonstrate rights or legitimate interests for the purposes of this element of the Policy, and contends that none of them is applicable. The service offered under the website at the Domain Name is not *bona fide*. The Respondent's name bears no relation to the Domain Name. The Respondent's use of the Domain Name is neither noncommercial nor fair.

The screenshots of the Respondent's website show that the Respondent was offering payment services not dissimilar to some of those offered by the Complainant and even if, which the Panel doubts, the Respondent selected "Freedompay" for its trading name, unaware of the existence of the Complainant, the Panel regards it as being most unlikely that the Respondent registered the Domain Name without having first checked out the availability of the identical name in the ".com" Top-Level Domain and the use being made of it.

The Panel is satisfied that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has chosen not to answer the Complainant's contentions. In the face of the evidence provided by the Complainant, the Panel concludes that the Respondent has no answer.

The Panel finds that the Complainant's contentions are well-founded and that the Respondent's intentions from the outset have been likely fraudulent. The Panel finds that the Respondent has no rights or legitimate interest in respect of the Domain Name.

D. Registered and Used in Bad Faith

By the same reasoning the Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(b)(iv) and 4(a)(iii) of the Policy. The fact that the objectionable use may now have ceased is of no moment. In the view of the Panel, while the Domain Name remains in the hands of the Respondent, it represents a malicious threat hanging over the head of the Complainant and, as such, a continuing bad faith use of the Domain Name.

For completeness it should be added that the Complainant also contends that the Respondent's aim was to disrupt the business of the Complainant (paragraph 4(b)(iii) of the Policy). The Panel is satisfied, however, that fraudulent profit was the Respondent's sole purpose.

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, <freedompay.cc>, be transferred to the Complainant.

/Tony Willoughby/

Tony Willoughby

Sole Panelist

Date: June 7, 2022