

ADMINISTRATIVE PANEL DECISION

Fireblocks Ltd. v. Arslan Chaudhry

Case No. D2023-0486

1. The Parties

The Complainant is Fireblocks Ltd., Israel, represented by Pryor Cashman, LLP, United States of America (“U.S.”).

The Respondent is Arslan Chaudhry, Türkiye.

2. The Domain Names and Registrar

The disputed domain names <fireblocks.finance> and <fireblocks.fund> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 February 3, 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 amendment to the Complaint on February 6, 2023.

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 February 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2023.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on March 8, 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 background information about the Complainant is taken from the Complaint, and has not been contested. The Complainant has operated since 2019 in the sphere of computer software, cybersecurity, finance, blockchain, and digital assets. In 2021, assets of some USD 2 trillion were secured on the Complainant's website. As of early 2022, the Complainant had been valued at USD 8 billion. Notable investors in the Complainant include Bank of New York Mellon, Paradigm, Cyberstarts, and Sequoia. Financial commentators have reported positively about the Complainant, including the Wall Street Journal, Bloomberg, Forbes, CoinDesk, and Reuters.

The Complainant owns the following trademark:

FIREBLOCKS, word mark, United States Patent and Trademark Office ("USPTO"), principal register, filed March 8, 2018, registered September 3, 2019, registration number 5853085, in class 42.

The Complainant's also owns and uses the domain name <fireblocks.com> for the purposes of its business website, and is represented on the social media Facebook, Twitter and LinkedIn.

Nothing is known about the Respondent except for such contact information as was provided to the Registrar for the purpose of registration of the disputed domain names <fireblocks.finance> on July 14, 2022, and <fireblocks.fund> on June 18, 2022. The disputed domain names resolve to seemingly identical websites (the "Respondent's websites"), which states at one point that "Fireblocks is a Decentralized Cryptocurrency token based on NFT (Non Fungible Token) Marketplace". The Complainant alleges the Respondent's websites are intended for scamming and phishing purposes, and has produced a number of third party assessments in support of the allegation.

5. Parties' Contentions

A. Complainant

The following is a summary of salient points in the Complainant's extensive submissions.

The Complainant requests that the Panel consolidate the two disputed domain names into a single Complaint.

The Complainant contends that it has rights in the trademark FIREBLOCKS and that the disputed domain names are identical or confusingly similar to the trademark. Each of the disputed domain names incorporates the whole of the Complainant's trademark. The generic Top-Level Domains ("gTLD") ".finance" and ".fund" respectively are technicalities that may be disregarded, but in any case are words associated with the Complainant's activities associated with finance and funds, in parallel with the gTLD ".com" in the Complainant's authentic domain name <fireblocks.com>. Neither gTLD ".finance" nor ".fund" should prevent a finding of confusing similarity.

The Complainant says the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has never authorised the Respondent to be a representative, agent or licensee of the Complainant and has had no business relationship with the Respondent. The disputed domain names were registered on dates in June and July 2022, whereas the Complainant's trademark was registered on September 3, 2019.

The Complainant says there is no evidence the Respondent is commonly known by the disputed domain names or has any rights in a trademark similar to the Complainant's trademark. The Complainant says that according to available information, there is no evidence the Respondent's use of the disputed domain names can be considered to be a *bona fide* offering of goods or services or a legitimate noncommercial or fair use because, through the resolving website, the disputed domain names are in use for an alleged phishing scheme and contain malware that collects visitors' personal and confidential financial information. Furthermore the resolving website prominently displays the Complainant's trademark without permission. The Respondent's website appears to create the impression that it represents or is associated with the Complainant. The Complainant says, with screen captures of various sources in support, that several third-party malware assessment websites and threat intelligence websites have reported that the websites to which the disputed domain names resolve are associated variously with malware, phishing, malicious and suspicious activities. The Complainant says it submitted a notice of infringement to the hosting provider of the website "www.fireblocks.finance" in order to disable access to the infringing content.

The Complainant contends that the Respondent registered and is using the disputed domain names in bad faith.

The Complainant says that it is widely known, having used its trademark in U.S. commerce at least as early as February 15, 2019, whereas the disputed domain names were registered later on June 18, 2022 (<fireblocks.fund>) and July 14, 2022 (<fireblocks.finance>), and submits that registration of a domain name confusingly similar to a widely-known trademark by an unaffiliated entity can create a presumption of bad faith.

The Complainant says the Respondent knew or should have known of the Complainant's trademark because it had been registered earlier, is identical to the disputed domain names, and pertains to similar financial services.

The Complainant says the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondents' website. The selection of the gTLDs ".finance" and ".fund" respectively for the disputed domain names indicates that the Respondent was aware of the Complainant's services.

The Complainant says the Respondent's use of a privacy service to conceal its identity is a further indication of bad faith in the circumstances.

The Complainant has cited a number of previous decisions under the Policy that it considers to provide support for its case.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute resolution provider, in compliance with the Rules, that:

"(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

The Complainant’s request for its Complaint in respect of the two disputed domain names to be consolidated is moot following the revelation by the Registrar that both were registered under the same Respondent name and address (paragraph 4(f) of the Policy).

A. Identical or Confusingly Similar

The Panel is satisfied by the documentation produced that the trademark FIREBLOCKS is registered at the USPTO on the principal register in the name of the Complainant in class 42 for “Software as a service (SAAS) services featuring software for use in blockchain cybersecurity”.

The disputed domain names incorporate the entirety of the Complainant’s trademark and are found to be identical to the trademark within the meaning of paragraph 4(a)(i) of the Policy. The gTLDs “.finance” and “.fund” respectively may be disregarded in the determination of confusing similarity.

The Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has stated a *prima facie* case to the effect that the Respondent has no rights or legitimate interest in the disputed domain names. The Complainant states that it has never had any business relationship with the Respondent or authorised the Respondent to act on behalf of the Complainant in any way. The Complainant’s trademark was registered on September 3, 2019, whereas the disputed domain names were registered in June and July 2022.

The Complainant having made out a *prima facie* case that the Respondent does not have rights or legitimate interest in the disputed domain names, it is open to the Respondent to contest the *prima facie* case under the provisions of paragraph 4(c) of the Policy by establishing:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The provisions of paragraph 4(c) of the Policy are without limitation.

The Respondent has not replied in the terms of paragraph 4(c) of the Policy. There is no evidence that the Respondent has been commonly known by the disputed domain names. The disputed domain names are found not to be in use for any *bona fide* offering of goods or services because, as expanded upon in the matter of registration and use in bad faith below, they resolve to websites that according to the evidence is being used for the purposes of impersonation of the Complainant and in bad faith.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that each disputed domain name been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four 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 on-line 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.”

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found alternatively by the Panel.

The Complainant has produced a screen capture made on January 10, 2023, of the seemingly identical websites to which both disputed domains at that time. The Respondent’s websites run to a number of pages encompassing aspects of blockchain technology, non fungible tokens (“NFT”), and purported information about investing in these concepts. A representation of the word “fireblocks” in upper case font appears on a number of pages in the form of a logo with a highly stylised initial letter “F” and with the added words “Measure The Difference”. The Respondent’s websites notably make liberal use of the colour orange in a shade similar to the colour orange also used on the Complainant’s website “www.fireblocks.com”. Much of the text on the Respondent’s websites is rich with esoteric jargon. For example, an “About Us” page begins by answering its own question “What Is Fireblocks?” with the explanation: “Fireblocks is a Decentralized Cryptocurrency token based on NFT (Non Fungible Token) Marketplace. Fireblocks Token (FBT) is live on Binance Smart Chain as a BEP20 Token. Fireblocks Token is the first kind of community powered Cryptocurrency with an Ecosystem based on a Unique Affiliate/Reward structure where NFTs can be staked to earn APY (Annual Percentage Yield) as a passive income. Fireblocks is a Decentralized project based on ‘proof of stake’ (POS) and ‘proof of burn’ (POB) protocols.” Visitors to the Respondent’s websites are invited “Contact Us” and to provide their name, email address, telephone number and websites address.

Further paragraphs are headed “Fireblocks Vision”, “How does the Ecosystem Works (sic)”, “What is Staking?”, “What is NFT staking?”, “How does NFT staking work?”, “How Do I get NFTs to Stake?”, “How do I encash Fireblocks?”, and “Burning”.

Evidence produced by the Complainant includes screen captures of the results of submitting the disputed domain name <fireblocks.finance> to third party websites that check for signs of possible fraudulent use or intent. For example, Scam Adviser (“www.scamadviser.com”) responded with, among other things, “The rating of this site is low. Caution needed” and gave it a trust score of 1/100. Phishing URL Check (“www.easydmarc.com”) rated <fireblocks.finance> as “suspicious” and “0/10”. PhishTank

("www.phishtank.org") said of the same disputed domain name "Verified: Is a phish. As verified by tehnlulz ifindphishes intertrack fraudjack CyberSecAntiPhish zenoi5 antiphishwg swiitch reportphisht". The PhishTank website went on to say "Is a phish 100% - Is NOT a phish 0%". Virus Total ("www.virustotal.com") reported security vendors' analyses showing 10 phishing applications and four malicious applications associated with the disputed domain name <fireblocks.finance>. Scam Adviser marked the disputed domain name <fireblocks.fund>, which has been redirected to <fireblocks.finance>, as "suspicious" with a trust score of 52/100.

The evidence from third party assessment providers in the previous paragraph is strongly suggestive of the disputed domain names having actual or potential malicious intent, such as would support a finding of registration and use in bad faith within the meaning of paragraph 4(a)(iii) of the Policy. Since, however, the information offered by the assessment sites may be regarded technically as hearsay, and the Complainant has not itself produced evidence of any actual incident of malicious or fraudulent use of the disputed domain names, the Panel opts to base its decision on the provisions specifically of paragraph 4(b)(iv) of the Policy.

The Respondent's websites are headed "Fireblocks", as is the Complainant's website, and the disputed domain names both comprise essentially the Complainant's trademark FIREBLOCKS. The Respondent uses the name "Fireblocks" and its own created "Fireblocks" logo in many places on the websites to which the disputed domain names resolve, including the claim "Copyright © Fireblocks all rights reserved". Key words such as "blockchain", "NFT", "non fungible token", and "cryptocurrency" appear widely on the Respondent's websites, as they do also on the Complainant's website. There can be little scope to doubt that the Respondent has targeted specifically the Complainant, operating in a similar sphere of financial products, and has intended to create confusion between the Respondent's websites and the Complainant's trademark. Under "General Disclaimer", the Respondent's websites states "Investing in Token Generating Events (TGE) and other crypto-currency transactions carries a certain amount of risk. As a result, we anticipate that you will have the financial skills, expertise, and understanding necessary to assess the risk of and participate in our TGE". Thus, there can be little realistic doubt that the Respondent's websites solicit public participation and is intended for commercial gain.

On the totality of the evidence, and on the balance of probabilities, the Panel finds the disputed domain names to have been registered and used with intent to attract Internet users by confusion between the Respondent's products and the Complainant's trademark for commercial gain. The Panel finds the disputed domain names to have been registered and used in bad faith under paragraphs 4(b)(iv) and 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 names <fireblocks.finance> and <fireblocks.fund> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: March 16, 2023