

ADMINISTRATIVE PANEL DECISION

FourKites, Inc. v. James Metz

Case No. D2023-0804

1. The Parties

The Complainant is FourKites, Inc., United States of America (“United States”), represented by Polsinelli PC, United States.

The Respondent is James Metz, United States.

2. The Domain Name and Registrar

The disputed domain name <fourkites.org> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2023. On February 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 2023, 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 (REDACTED FOR PRIVACY / Domain Administrator, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 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 March 1, 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 March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on March 30, 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 is a supply chain visibility company founded in 2013, with offices in the United States, Netherlands, Germany, India and Singapore. The Complainant tracks shipments including across road, rail, ocean and air in over 200 countries and territories. Its customers include large and well-known companies across various business sectors. It is a substantial business, tracking more than 3 million shipments daily. Since its incorporation, the Complainant has carried out this business under the trademark FOURKITES in the United States, and now uses that trademark also in connection with its business in other countries.

The Complainant is the proprietor of registered trademark rights in FOURKITES in plain and logo form in the United States, Brazil, Switzerland, the European Union, the United Kingdom, India and Mexico. Annexed to the Complaint were details of the following:

- United States trademark registration no. 4601341 for FOURKITES in Class 42 registered on September 9, 2014
- United States trademark registration no. 6325316 for FOURKITES Logo in Classes 9 and 42 registered on April 20, 2021

The disputed domain name was registered on January 30, 2023. The disputed domain name does not currently link to any website. However, annexed to the Complaint were screenshots and copies of emails showing that the disputed domain name has been used in approaches to university students and jobseekers to make false offers of interviews and internship opportunities at the Complainant's company. The Complainant says that university students in the United States have unwittingly interviewed with the Respondent for "internships" with the Complainant, in the course of which the Respondent has communicated with the victims using the email address "[...]@fourkites.org." Under this guise, the Respondent is said to have solicited victims to fill out job application paperwork that includes sensitive personal information, and has also issued fake checks to victims, as part of a scheme to defraud individuals into disclosing sensitive financial information or misdirecting funds to the Respondent.

The Complainant says that this was a scheme of fraud and deceit which was designed to enable the Respondent to communicate by email with potential victims in order to obtain their personal details and engage in identity theft and phishing activities.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to its registered trademark FOURKITES.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorised the Respondent to use its trademark and argues that the Respondent registered the disputed domain name in order to create a false and misleading association with the Complainant, in an attempt to impersonate the Complainant and carry out what appear to be phishing activities. The Respondent has not been commonly known by the disputed domain name and has not been making a *bona fide* offering of goods or services in connection with it, nor has it been making a legitimate noncommercial or fair use of it.

Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant alleges that the Respondent registered and has used the disputed domain name solely for the purpose of impersonating the Complainant and defrauding members of the public, with intent for commercial gain to misleadingly attract individuals to the Respondent's online activities. The Complainant also alleges that the Respondent has provided false Whois contact details in order to disguise

its identity, which the Complainant says also evinces bad faith. According to the Complainant, public records do not reflect an individual by the name of the Respondent living at the given address; the zip code given does not accord with the Respondent's named town in Minnesota, but rather with Phoenix, Arizona; the area code for the given telephone number is not associated with Minnesota but rather with New Jersey; and the phone number appears to be registered to a business based in Westwood, New Jersey known as Acepayments.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant has proved that it owns registered trademark rights in FOURKITES and trademarks including FOURKITES.

The relevant comparison is between the Complainant's marks and the second-level portion of the disputed domain name ("fourkites"). The Top-Level Domain ".org" may be disregarded for this purpose (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11). The disputed domain name contains the Complainant's trademark FOURKITES in its entirety, and nothing else.

The Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has never authorized the Respondent to use its trademarks, nor is there any evidence that the Respondent has ever been commonly known by the disputed domain name or has acquired any trademark rights in it.

The Complainant has provided evidence that the Respondent has used the disputed domain name in connection with fraudulent impersonation of the Complainant and the obtaining of sensitive personal information from online jobseekers under that deceptive guise. In carrying out these deliberate acts of deception, it is clear that the Respondent has used the domain name in connection with illegitimate ends. Such activities point to an absence of any rights or legitimate interests on the part of the Respondent, and the Respondent has made no effort to rebut the Complainant's assertions in this regard.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Para 4(b) of the Policy sets out a number of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b)(iv) in particular, the Panel may find both registration and use in bad faith where there is evidence that by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on it.

In this case, the Complainant has shown evidence that the Respondent has used the disputed domain name in connection with a scheme to impersonate the Complainant and to falsely offer job interviews and opportunities to online jobseekers in order to obtain sensitive personal information. The Complainant alleges that these deliberate acts of deception were carried out with the intention of conducting a phishing scheme. Such activities amount to intentional use of the domain name to attract, for commercial (and indeed illegitimate) gain, Internet users to an online location of the Respondent. The Respondent has not responded to the Complaint and has made no effort to rebut these very serious allegations against it.

The Panel also notes [WIPO Overview 3.0](#), section 3.1.4, which states that “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith”; and [WIPO Overview 3.0](#), section 3.4, which states that “use of a domain name for purposes other than to host a website may constitute bad faith”, such as “sending email [or] phishing”, especially where “the respondent's use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant's actual or prospective customers”.

In addition, the Panel accepts that the Respondent appears to have provided false contact details in its Whois record in order to disguise its identity, and the Panel accepts that this conduct, too, points to registration and use of the disputed domain name in bad faith.

The Panel finds that the disputed domain name was 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, <fourkites.org>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: April 13, 2023