

ADMINISTRATIVE PANEL DECISION

Victor Rackets Ind. Corp., Sports Group Denmark A/S v. EPC Alternative Sources Ltd, Domains By Proxy, LLC
Case No. DNL2023-0017

1. The Parties

The Complainants are Victor Rackets Ind. Corp., Taiwan Province of China, and Sports Group Denmark A/S, Denmark (together the “Complainant”), represented by Patrade A/S, Denmark.

The registrant of the disputed domain names is EPC Alternative Sources Ltd, Cyprus, represented by Euromarks, Netherlands, and Domains By Proxy, LLC, United States of America (the “Respondent”). The effective domain name user and party in interest in these proceedings is EPC Alternative Sources Ltd, Cyprus¹.

2. The Domain Names and Registrar

The disputed domain names, <forzabokszakken.nl>, <forza-boxing.nl>, <forzaboxing.nl>, <forzafightgear.nl>, <forzafightinggear.nl>, <forzafitwear.nl>, <forzafootwear.nl>, <forza-gloves.nl>, <forzagloves.nl>, <forzabel.nl>, <forzalistyle.nl>, <forzalingerie.nl>, <forza-mma.nl>, <forzamma.nl>, <forznightwear.nl>, <forzanutrition.nl>, <forzasport.nl>, <forzasportsnutrition.nl>, <forzasportssupplements.nl>, <forzasupplements.nl>, <forzaunderwear.nl>, <forzaworld.nl>, <forzaxxx.nl>, <forzayourchoice.nl>, and <weareforza.nl>, are registered with SIDN through GoDaddy.com.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 17, 2023, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain names.

On May 22, 2023, SIDN 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 and contact information in the Complaint. On May 22, 2023, the registrar in its turn transmitted by email to the Center further information about the effective domain name user and party in interest in these proceedings.

¹ The Panel notes that the Response identifies the Respondent as “EPC Alternative Sources Ltd” with respect to all of the disputed domain names.

The Center sent an email communication to the Complainant on May 25, 2023, providing the information disclosed by SIDN and the registrar, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on May 30 and 31, 2023.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the "Regulations").

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified the Respondent and the effective domain name user and party in interest in these proceedings of the Complaint, and the proceedings commenced on June 2, 2023. In accordance with the Regulations, article 7.1, the due date for Response was June 22, 2023. The Response was filed with the Center on June 22, 2023.

On June 23, 2023, SIDN commenced the mediation process. On June 27, 2023, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Willem J. H. Leppink as the panelist in this matter on July 11, 2023. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

On July 11, 2023, the Center received further submissions from the Complainant, and on July 13, 2023, the Center received further submissions from the Respondent.

4. Factual Background

The following facts are undisputed.

The first Complainant is the owner of various trademark rights in various countries in the world, in relation to FORZA and FZ FORZA, including the European Union (EU) trademark FORZA (wordmark) with registration number 000432443 and a registration date of August 6, 1998 in class 25 for "Clothing, including leisure wear and sportswear; footwear, including sports shoes; headgear" as well as in class 28 for "Games and playthings; gymnastic and sporting articles (not included in other classes); badminton rackets, tennis rackets, squash rackets, balls, including tennis and racket balls, shuttlecocks of feathers, shuttlecocks of nylon" ("FORZA Trademark").

The FORZA Trademark is the subject of cancellation proceedings. The cancellation division of the European Union Intellectual Property Office (EUIPO) has partially cancelled the registration, but an appeal against the cancellation decision is pending.

Sports Group Denmark A/S holds a license to the FORZA Trademark for the purpose of use and enforcement.

The Respondent started its business in Cyprus of selling (then) mainly boxing wear and boxing gear. The Respondent is the owner of various trademark rights in various countries in the world, in relation to FORZA FIGHTING GEAR and FORZA SPORTSWEAR (the "Respondent Trademarks"), including the EU trademark FORZA FIGHTING GEAR (figurative) with registration number 016294993 and a registration date of May 12, 2017.

The Respondent Trademarks are the subject of cancellation proceedings.

Inter alia, the Complainant and the Respondent, are involved in extensive trademark litigation, which, after an interim appeal to the Danish Eastern High Court, led to the Complainant being granted an injunction against the Respondent for Denmark, by the Danish Maritime and Commercial High Court on January 25, 2023. Against this judgment an appeal was lodged by *inter alia* the Respondent with the Eastern High Court.

All the disputed domain names resolve to the same website of the Respondent, <forzaworld.com> (the “Website”). The Website offers for sale sporting goods, including boxing gear and sportswear. The disputed domain names were registered between February 20, 2018, and March 4, 2022.

5. Parties’ Contentions

A. Complainant

The Complainant – to the extent relevant for rendering a decision– contends the following.

All of the 25 disputed domain names are confusingly similar to the FORZA Trademark by incorporating the exactly the FORZA Trademark without including any sufficiently distinctive elements to prevent any association with FORZA Trademark.

The Respondent has no rights or legitimate interests in disputed domain names. The term, “forza”, has no linguistic meaning that would warrant its usage for other purposes than as a brand or, as the case may be, to mislead consumers as to the origin of one’s products due to confusing similarity with the FORZA Trademark.

Although the Respondent holds the Respondent Trademarks, it has been decided by a competent court that the trade mark registrations are invalid as concerns sportswear and similar goods. The Respondent’s defense requires demonstrating a legitimate interest that the Respondent’s use of the disputed domain names has been in connection with a *bona fide* offering of goods and services. The Respondent’s continued use of the disputed domain names is not in good faith based on the court ruling which required the cessation of the Respondent’s use of “FORZA” for sportswear and similar goods. The Respondent cannot have any legitimate interests in using a trademark that infringes the rights of others as decided by a competent court in the EU. Furthermore, the Respondent is not, to the knowledge of the Complainant, commonly known by the disputed domain names. Similarly, the Respondent makes use of the disputed domain names for commercial purposes while being aware of the risk of misleadingly diverting consumers away from the Complainant.

The disputed domain names all resolve to the same Website. The earliest registration of (one of) the disputed domain names was on February 20, 2018. As the Complainant is the owner of the FORZA Trademark, and as a result of the popularity of this trademark the Respondent knew or should have known of the Complainant’s rights, also because the Respondent is operating in the same market. The Respondent registered all of the disputed domain names for the purpose of preventing the Complainant from reflecting its mark in a corresponding disputed domain name.

B. Respondent

The Respondent has submitted a formal response in which the Respondent – to the extent relevant for rendering a decision – contends the following.

The Complainant and the Respondent are cross-challenging their respective trademark rights through different legal venues: the courts in Denmark, the EUIPO and the UKIPO (UK trademark office). In none of these cases has there been a final decision rendered. The majority of the cancellation actions have been suspended, two revocation actions by the Respondent against the Complainant have been partly successful but were appealed by the Respondent. As to the court proceedings in Denmark (one interlocutory and one proceeding on the merits): the interim decision of January 23, 2023 (apparently meant to state January 25, 2023), by the Maritime and Commercial Court has been appealed by the Respondent and the proceedings on the merits have been suspended.

The Complainant consented to the registration and use of the Respondent’s Trademarks. The Respondent is the owner of the Respondent Trademarks, which are subject to cancellation actions but these actions have been suspended pending the outcome of simultaneous actions, therefore there is no final outcome yet. As

long as the registrations have not been invalidated by a court in a proceeding on the merits, or by EUIPO in this case, the Respondent *prima facie* owns trademark rights for the European Union. The FORZA Trademark is also subject to revocation actions by the Respondent. The Respondent is making a legitimate use of the disputed domain names, namely to market its own products.

The Respondent started its business in Cyprus of selling (then) mainly boxing wear and boxing gear, in 2014-2015, when it registered <forzacyprus.com>. Not until the Complainant contacted the Respondent in or around November of 2017, the Respondent heard of the Complainant's brand, which was understandable since the Complainant historically has been mainly active in the world of the badminton sport only.

The Complainant has failed to provide accurate and complete information on at least four counts: (1) the judgment of January 25, 2023, was an interim decision, providing a temporary relief by issuing a preliminary injunction, (2) the preliminary injunction is limited to the territory of Denmark, (3) the judgment has been appealed and a decision on appeal is expected soon.

The Respondent asks to suspend the proceeding on the disputed domain names until the decision in the appeal against the judgment of January 25, 2023, is rendered and to afford the Respondent the chance to submit additional arguments.

6. Discussion and Findings

6.1 Preliminary Matters

A. Further Submissions

On July 11 and 13, 2023, the Parties filed further submissions regarding developments in pending related court cases. Under article 11.2 of the Regulations, the panelist shall determine the admissibility of such submission. The Panel has accepted and reviewed the Parties' further submissions. The Panel notes that even if these would not have taken into consideration, the outcome of the decision would remain unchanged.

B. Request to suspend proceeding

The Respondent has requested to suspend the proceeding on the disputed domain names until the decision in the appeal against the judgment of January 25, 2023, is rendered and to afford the Respondent the chance to submit additional arguments. The Regulations do not provide provisions to suspend the proceeding unless this is for settlement negotiations. Also, the nature of the proceeding is to offer an efficient and quick dispute resolution. For these reasons, the Panel denies this request.

6.2 Substantive findings

Pursuant to article 2.1 of the Regulations, the Complainant must prove each of the following three elements:

- a) the disputed domain names are identical or confusingly similar to:
 - I. a trademark or trade name protected under Dutch law in which the Complainant has rights; or
 - II. a personal name registered in the General Municipal Register (Gemeentelijke Basisadministratie) of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which the Complainant undertakes public activities on a permanent basis; and
- b) the Respondent has no rights to or legitimate interests in the disputed domain names; and
- c) the disputed domain names have been registered or are being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to article 2.1(a) under I of the Regulations, the Complainant must establish that the disputed domain names are identical or confusingly similar to a trademark or trade name in which the Complainant has rights. The Complainant has shown that it has rights in the FORZA Trademark, which also grants protection in the Netherlands. The FORZA Trademark has been partially cancelled by the cancellation division of EUIPO and this decision has been appealed. Whatever scenario may result from this, at a minimum a part of the FORZA Trademark registration is valid and not subject to any dispute between the parties.

The Panel finds that, 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, as set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition¹ (“[WIPO Overview 3.0](#)”), section 1.7.² In this case, the FORZA Trademark is included in all the disputed domain names, and the addition of other terms does not prevent a finding of confusing similarity under the first element, as set out in [WIPO Overview 3.0](#), section 1.8.

It is furthermore well established under “.nl” case law that the country code Top-Level Domain “.nl” may be disregarded for purposes of article 2.1(a) of the Regulations.

The Panel finds that the disputed domain names are confusingly similar to the FORZA Trademark, as required by the Regulations.

The Complainant has thus established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests; Registered or Used in Bad Faith

Consistent with earlier decisions under the Regulations, the Complainant must *prima facie* demonstrate that the Respondent has no rights to or legitimate interests in the disputed domain names. If the Complainant succeeds in making out this *prima facie* case, the burden of production shifts to the Respondent, who will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interests in the disputed domain names (see *Auto 5 v. E. Shiripour*, WIPO Case No. [DNL2008-0027](#)).

The Complainant and the Respondent, are involved in extensive trademark litigation, which, after an interim appeal to the Danish Eastern High Court, led to the Complainant being granted an injunction against the Respondent for Denmark, by the Danish Maritime and Commercial High Court on January 25, 2023. Against this judgment an appeal was lodged by *inter alia* the Respondent with the Eastern High Court. In addition, the Complainant and the Respondent are involved in cancellation actions about the FORZA Trademark and the Respondent Trademarks.

The Complainant has relied on this judgment of the Danish Maritime and Commercial High Court, but has failed to include in the Complaint that apparently on February 22, 2023, nearly three months before the Complaint on the disputed domain names under the Regulations has been filed, an appeal against this judgment of the Danish Maritime and Commercial High Court, has been lodged.

In the Complaint, the Complainant has certified that the information contained in the Complaint is “to the best of the Complainant’s knowledge complete and accurate”. In the Panel’s opinion, relying on a judgment, whilst not mentioning that an appeal has been lodged against such judgment, is a relevant fact that should have been disclosed by the Complainant.

In addition, based on the record before it, the Panel finds that, on a balance of probabilities, there is a not

² While the Complaint is brought under the Regulations, and not the UDRP, given the similarities between the two, where applicable, the Panel considers UDRP precedent and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) relevant to the current proceeding, and will refer to it where appropriate.

negligible chance that the final outcome of the litigation and office actions between the Complainant and the Respondent, will be that the Respondent may have rights to or legitimate interests in the disputed domain names.

The Panel finds that the present case falls outside the scope of the Regulations in light of the complexity of the Parties' dispute. Therefore, such dispute would be more appropriately addressed by a court of competent jurisdiction with greater inquisitorial powers.

The Complainant has thus not established the second element of article 2.1 of the Regulations.

In light of the Panel's finding under the second element, it is not necessary for the Panel to make a finding in relation to the third element. Nonetheless, in line with the considerations in relation to the second element, on a balance of probabilities, there is a not negligible chance that the final outcome of the litigation and office actions between the Complainant and the Respondent, will be that the Respondent may not have registered or used the disputed domain names in bad faith.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/Willem J. H. Leppink/

Willem J. H. Leppink

Panelist

Date: July 16, 2023