

ADMINISTRATIVE PANEL DECISION

Fisher Asset Management, LLC v. Jack Byrnes and Emma Rivera, Starfield Ship Energy
Case No. D2024-1931

1. The Parties

The Complainant is Fisher Asset Management, LLC, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondents are Jack Byrnes and Emma Rivera, Starfield Ship Energy, both United States.

2. The Domain Names and Registrar

The disputed domain names <fisherinvestmenstsevents.com> and <fisherinvestments.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 8, 2024. On May 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 8, 2024, 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 Respondents (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent email communications to the Complainant on May 10 and 16, 2024 respectively, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the final amended Complaint on May 21, 2024.

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 Respondents of the Complaint, and the proceedings commenced on May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on June 18, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on June 24, 2024. 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 in the business of investment management and investment advisory services. It owns the trademark registration for FISHER INVESTMENTS which it has registered in a number of jurisdictions around the world, including the United States (Reg. No. 3103881, registered on June 13, 2006). The Complainant operates its official website through the domain name <fisherinvestments.com>.

According to the Whois records, the disputed domain name <fisherinvestmenstsevents.com> was registered on January 29, 2024, and the disputed domain name <fisherinvestments.com> was registered on February 6, 2024. The Complainant has provided evidence that the Respondents have not used the disputed domain names in connection with active websites, but that the Respondents have used the disputed domain name <fisherinvestments.com> to send and receive one or more email messages imitating the Complainant and seeking to commit financial fraud. This evidence is comprised of actual email messages sent and received using the <fisherinvestments.com> email address and the establishment of Mail Exchange (“MX”) records associated with both of the disputed domain names.

On April 22, 2024, a representative of the Complainant sent communications directed to the Respondents demanding that the Respondents cease and desist the unauthorized use of the Complainant’s mark and the disputed domain names. The Complainant received no response to this communication.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant’s trademarks; that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and that the disputed domain names were registered and are being used in bad faith.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Procedural Issue – Consolidation of Multiple Respondents

There are two named Respondents (two underlying registrants disclosed by the Registrar) – one for each of the disputed domain names. The Complainant requests that both be consolidated into this matter. Consolidation is proper, so the Complainant’s request for consolidation is granted.

Paragraph 10(e) of the Rules states that a “[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”. Paragraph 10(c) of the Rules provides, in relevant part, that “the [p]anel shall ensure that the administrative proceeding takes place with due expedition”. Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) summarizes the consensus view of UDRP panels on the consolidation of multiple respondents and provides that where a complaint is filed against multiple respondents, panels consider whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties.

The record indicates the disputed domain names are most likely under common control. The following facts support this conclusion: (1) the disputed domain names were registered through the same Registrar, using the same privacy service provider, approximately a week apart, (2) the composition of the disputed domain names is similar, (3) MX records have been set up for both of the disputed domain names and there is actual evidence of the fraudulent use of the disputed domain name <fisherinvestments.com>, (4) both underlying registrants are located in the United States, and (5) the contact information disclosed for the underlying registrants is more likely than not unreliable.

The Respondents have not presented any arguments as to why consolidation would be unfair or inequitable. Accordingly, conditions for proper consolidation of the disputed domain names into one matter are present here.

B. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain names are identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the FISHER INVESTMENTS mark by providing evidence of its trademark registrations.

The Panel finds that both of the disputed domain names are confusingly similar to the Complainant’s FISHER INVESTMENTS mark. Both of the disputed domain names incorporate minor misspellings of the Complainant’s FISHER INVESTMENTS mark. UDRP panels have consistently held that “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.” [WIPO Overview 3.0](#), section 1.9. Such insignificant modifications to trademarks are commonly referred to as “typo-squatting”. *Six Continents Hotels, Inc. v. null John Zuccarini d/b/a Country Walk*, WIPO Case No. [D2003-0161](#). “Domain names which constitute typo-squatting are confusingly similar by definition; it is this similarity which makes them attractive.” *Dell Computer Corporation v. Clinical Evaluations*, WIPO Case No. [D2002-0423](#); see also *American Home Products Corporation v. Privateer Ltd.*, WIPO Case No. [D2000-0455](#) (the domain name <advil.com> was held to be confusingly similar to ADVIL). The addition of the word “events” to one of the disputed domain names does not prevent a finding of confusing similarity. The FISHER INVESTMENTS mark remains sufficiently recognizable for a showing of confusing similarity under the Policy. *LKQ Corporation v. King Murphy*, WIPO Case No. [D2022-3623](#).

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

C. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondents lack rights or legitimate interests in respect of the disputed domain names. If the Complainant makes that showing, the burden of production of demonstrating rights or

legitimate interests shifts to the Respondents (with the burden of proof always remaining with the Complainant).

On this point, the Complainant asserts, among other things, that: (1) the Respondents are not sponsored by or affiliated with the Complainant in any way, (2) the Complainant has not given the Respondents permission to use the Complainant's trademarks in any manner, including in domain names, nor has the Complainant licensed, authorized, or permitted the Respondents to register domain names incorporating the Complainant's trademark, (3) the Respondents are not commonly known by the disputed domain names, and (4) the Respondents are not engaged in any legitimate noncommercial or fair use of the disputed domain names, nor are they using the disputed domain names in connection with a bona fide offering of goods or services. Instead, according to the Complainant, the Respondents have used the disputed domain name <fisherinvestments.com> to engage in nefarious activities including the sending and receiving of phishing emails and MX records have been set up for both of the disputed domain names.

The Panel finds that the Complainant has made the required prima facie showing. The Respondents have not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondents' favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

D. Registered and Used in Bad Faith

In the circumstances of this case, particularly where it has been shown that at least one of the Respondents used the disputed domain name <fisherinvestments.com> to imitate the Complainant, it is clear that that Respondent targeted the Complainant when it registered that disputed domain name. Such a showing is sufficient here to establish bad faith registration of the disputed domain name. *Signify Health, LLC v. Sasha still*, WIPO Case No. [D2023-1208](#). Bad faith use is clear from the Respondent's activities of using the disputed domain name to send fraudulent email messages. *Id.* For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element as to the disputed domain name <fisherinvestments.com>.

Given the common control over the two disputed domain names by the Respondents (see section 6.A. above), the Panel finds it more likely than not that the disputed domain name <fisherinvestmenstsevents.com> was registered with the same bad faith intention, particularly noting this disputed domain name also incorporates a misspelled version of the Complainant's FISHER INVESTMENTS trademark. Although this disputed domain name does not resolve to an active website, having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's FISHER INVESTMENTS trademark, and the composition of this disputed domain name, and finds that in the circumstances of this case the passive holding of this disputed domain name does not prevent a finding of bad faith under the Policy. Further, the registration of MX records associated with this disputed domain name suggests the disputed domain name could be used to send fraudulent email. See *Carrier Corporation v. DNS Admin, Domain Privacy LTD*, WIPO Case No. [D2021-3728](#) ("if the Respondent is using the disputed domain name to send fraudulent emails – which the MX records suggest is at least a possibility – then bad faith use is further obvious").

The lack of response by the Respondents to this proceeding, and to the cease-and-desist letters sent by the Complainant further supports a finding of bad faith in the circumstances of this case. Past UDRP panels have held that failure to respond to a cease-and-desist letter may be considered a further factor supporting a finding bad faith registration and use of a domain name. See *LEGO Juris A/S v. Eveline Christiany*, WIPO Case No. [D2011-2294](#).

For these various reasons, the Panel finds that the Complainant has established this third element under 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 <fisherinvestmenstsevents.com> and <fisherinvestments.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: July 8, 2024