

## **ADMINISTRATIVE PANEL DECISION**

Eduardo Montefusco, Fitness Investment Srl v. Domain Management, Blue Nova Inc

Case No. D2025-4732

### **1. The Parties**

The Complainants are Eduardo Montefusco, Italy, (the “First Complainant”) and Fitness Investment Srl, Italy, (the “Second Complainant”), represented by LMN - Consulenza legale in proprietà intellettuale, Italy.

The Respondent is Domain Management, Blue Nova Inc, Barbados, represented by ESQwire.com PC, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <fitactive.com> is registered with GoDaddy Online Services Cayman Islands Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2025. On November 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 17, 2025, 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 (Registration private, Domains By Proxy, LLC / DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainants on November 18, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on November 20, 2025.

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 December 4, 2025. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2025. Response was filed with the Center on December 28, 2025.

The Center appointed Wilson Pinheiro Jabur, Andrea Cappai, and Douglas M. Isenberg as panelists in this matter on January 20, 2026. The Panel finds that it was properly constituted. Each member of 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 Complainants exploit the gym and fitness services segment, having the First Complainant established a franchise system under the FITACTIVE trademark originally in Italy, and which was expanded in the past few years to other European countries (Spain and Romania - Annex 5 to the Complaint).

Deloitte's 2023 report on "European Health and Fitness Markets" placed the Complainants as the largest operators by number of clubs in Italy (Annex 6 to the Complaint).

The Complainants' official website is available at <fitactive.it>, having the <fitactive.it> domain name been registered on September 29, 2014.

The First Complainant is the owner of the following trademark registrations:

- Italian trademark registration No. 1668331 for the FITACTIVE IL FITNESS LOW COST word and device mark, filed on March 18, 2015, registered on March 7, 2016, in class 41;
- Italian trademark registration No. 302018000017756 for the FITACTIVE IL FITNESS PER TUTTI word and device mark, filed on May 21, 2018, registered on January 22, 2019, in class 41;
- Italian trademark registration No. 302020000054607 for the FITACTIVE word and device mark, filed on July 6, 2020, registered on December 11, 2020, in class 41; and
- International trademark registration No. 1564586 for the FITACTIVE IL FITNESS PER TUTTI word and device mark, registered on September 28, 2020, in class 41.

The disputed domain name was registered on May 5, 2005, and presently redirects Internet users to the webpage available at "https://venture.com/domains/fitactive.com", where it is being offered for lease.

#### **5. Parties' Contentions**

##### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend to have developed a franchise under the FITACTIVE trademark in the fitness sector which spread throughout Italy from 2007 to 2025, having 150 gyms been opened, each gym boasting an average flow of about 2,800 members per year, with about 1,500 weekly visits and an average annual turnover of over EUR 650,000.

The Complainants further assert that in view of significant investments made, various events and promotions through telematic and digital means, as well as TV commercials and mentions at popular programs in Italian newspapers such as *Corriere della Sera*, *Gazzetta dello Sport*; and the sponsorship of MotoGP and of the A.C. Monza Calcio, an Italian football team playing in the A league, the Complainants' FITACTIVE trademark became notorious in Italy. The Complainants also indicate to have expanded their franchise to other European and non-European countries.

Under the Complainants' view, the disputed domain name is identical to the FITACTIVE trademark, entirely reproducing it, there being a high likelihood of confusion.

As to the Respondent's lack of rights or legitimate interests in the disputed domain name, the Complainants assert that:

- a. they have never authorized the Respondent to register or use the disputed domain name;
- b. there is no evidence to suggest that the Respondent is known by the disputed domain name; and
- c. the Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, what is corroborated by the parking of the disputed domain name offering it for sale.

Lastly, the First Complainant sent an email to the Respondent requesting it to provide its best realistic price for the disputed domain name, to what the Complainant claims the Respondent requested "a price in the six figures range only", being it clear that the Respondent acquired the disputed domain name for the purposes of reselling it at a price that far exceeds the out-of-pocket costs with its registration and maintenance and thus would yield a significant profit at the Complainant's expense.

## **B. Respondent**

The Respondent contends that the Complainants have not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent asserts to have historically registered short or common word domain names which are commercially valuable due to their inherently valuable single and multiple common dictionary word dot com domains.

The Respondent argues that the combination of the words "fit" and "active" are hardly unique to the Complainants, rather being fairly descriptive when used in conjunction with a fitness center or fitness related product, what is shown in a search conducted before the WIPO Global Marks Database that reveals twenty-six (26) registered figurative (design) marks, of which the Complainant holds only six (Exhibit 6 to the Response).

Furthermore, the Respondent points out that the disputed domain name was registered by CK Ventures, Inc., the Respondent's predecessor<sup>1</sup>, on May 5, 2005 - at least 13 years prior to the Complainant's earliest (2018) applications for its trademarks and at least two years prior to the Complainants' existence (based on the First Complainant's statement that he started his business in 2007, though it is unclear what that means in terms of use of the FITACTIVE term and its reach), there being simply no evidence of cybersquatting by the Respondent.

The Respondent indicates that for over eight years the disputed domain name has been showcased with the Respondent's other domain name assets on its <venture.com> platform that allows interested parties to lease domain names for personal or business use and that, historically, prior to 2017 the Respondent hosted underdeveloped domain names with domain name parking services that paid a share of the advertising revenue they generated, which placed pay-per-click ("PPC") advertising links based on a Google advertiser feed on hosted domain names. These PPC advertising links were related to the general interest topics or the dictionary key words in the given domain name.

The Respondent states that its platform has, in the past 16 years, logged many third-party inquiries and offers to purchase the disputed domain name and that an individual identified as "Eduardo" made at least

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<sup>1</sup> As to the consistency in the chain of title over the disputed domain name, the Respondent asserts that the disputed domain name was originally registered by CK Ventures, Inc., an entity under common ownership and control with the Respondent, as part of a portfolio of generic domain names registered at that time, having CK Ventures, Inc. subsequently merged with Vertical Axis, Inc. (Exhibit 2 to the Response), which later underwent a corporate name change to Blue Nova, Inc. on June 1, 2015 (Exhibit 3 to the Response) and then having the disputed domain name been transferred to Vertical Axis and subsequently to the Respondent maintaining a consistent ownership in the disputed domain name since its original registration in 2005.

one offer to purchase the disputed domain name in February 2018 and again in September 2025 (Exhibit 5 to the Response).

Lastly, the Respondent requests that the Complainants should be found guilty of Reverse Domain Name Hijacking (“RDNH”) given that the Complainants, assisted by specialized counsel, should have known when researching and preparing the Complaint that they could not prove at least two of the three elements to prevail.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the FITACTIVE mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

The Panel notes that, based on the available record, the Respondent registered the disputed domain name before the Complainants began using or acquired any rights in the FITACTIVE trademark. In light of the disputed domain name’s descriptive or generic character, and in the absence of evidence that the Respondent targeted the Complainants, the Panel considers that the Complainants have not demonstrated that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the second element of the Policy has not been established.

### **C. Registered and Used in Bad Faith**

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainants’ trademarks, which were only registered more than a decade after the registration of the disputed domain name.

The Panel notes that the disputed domain name is being offered for sale, but this is not sufficient on its own, considering the circumstances of this case, to conclude that the Complainants have satisfied their burden of

proving registration and use in bad faith. The Panel finds that the Respondent did not register the disputed domain name in bad faith targeting the Complainants or their trademark rights because the Complainants did not prove that the Respondent registered the disputed domain name due to its significance in relation to the Complainants or any trademark of the Complainants. Furthermore, the Complainants did not prove to be notorious or well-known at the time that the Respondent registered the disputed domain name, nor did they assert to having any trademark rights at that time. [WIPO Overview 3.0](#), section 3.8.1. The Complainants did also not provide any evidence showing that the Respondent was targeting the Complainants with the disputed domain name at any point in time. On the contrary, the Panel finds more likely than not that the Respondent registered it due to its value as a descriptive domain name.

The Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

This is a clear case in which the Complainants, represented by counsel, ought to have known that they could not have succeeded under the Policy: the Complainants did not claim any trademark rights - whether registered or unregistered - in FITACTIVE at the time the disputed domain name was registered; the disputed domain name was registered in 2005, well before the Complainants registered their FITACTIVE trademarks in 2015/2016; the disputed domain name consists of the combination of two common words which can be read as descriptive; the Complainant intends to rely on its alleged notoriety which however was not proven at the time of registration of the disputed domain name; there is no bad faith registration by the Respondent, who has not targeted the Complainant.

The Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Wilson Pinheiro Jabur/*  
**Wilson Pinheiro Jabur**  
Presiding Panelist

*/Andrea Cappai/*  
**Andrea Cappai**  
Panelist

*/Douglas M. Isenberg/*  
**Douglas M. Isenberg**  
Panelist  
Date: February 3, 2026