

ADMINISTRATIVE PANEL DECISION

FC2, Inc. v. Anouk Traversé
Case No. D2023-3359

1. The Parties

The Complainant is FC2, Inc., United States of America, represented by Corsearch, Kingdom of the Netherlands.

The Respondent is Anouk Traversé, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <fc2ppv.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 7, 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 August 11, 2023.

On August 7, 2023, the Center received an email communication from Respondent.

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 August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. On September 4, 2023, the Center sent an email communication informing the parties of the Commencement of Panel Appointment Process.

The Center appointed Adam Taylor as the sole panelist in this matter on September 12, 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 provides video hosting services in Japan via a website at “www.fc2.com”, using the mark FC2. According to a Similarweb report dated August 2022, the Complainant’s was site ranked 106th in the world and 12th in Japan, with some 326 million site visits during that month. The Complainant hosts pay per view adult content on the subdomain <adult.contents.fc2.com>.

The Complainant owns many trade marks for FC2 including International Registration No. 1275290, registered on March 16, 2015, in classes 38, 41, 42 and 45.

The disputed domain name was registered on May 19, 2017.

As of March 14, 2023, the disputed domain name resolved to a website that was entitled “FC2PPV” and displayed adult video content as well as pay per click (“PPC”) links to other adult websites.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends, amongst other things, that the content on the Respondent’s site was apparently copied from the Complainant’s site.

B. Respondent

The Respondent sent an informal email communication to the Center on August 8, 2023, stating that the Respondent understands that the complaint relates to the trade mark FC2 “as approached by the company before”, and claiming that the content on the Respondent’s platform did not infringe Complainant’s rights. The Respondent added that “our platform allows users to upload their homemade videos into the platform to share with the global audience”.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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.

Based on the available record, the Panel finds the Complainant has 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "PPV") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Furthermore, panels have held that the use of a domain name for illegal activity (*e.g.*, impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In this case, the Respondent claims that the content on the Respondent's website did not infringe the Complainant's rights. It appears that the Respondent is referring to the fact that the videos on its website are user-generated. However, even if that is correct, the disputed domain name consists of the Complainant's highly distinctive mark plus the abbreviation "PPV", denoting "pay per view", which is strongly associated with the Complainant's service. Furthermore, the Respondent has used the disputed domain name for a website branded with that same term and offering similar, if not identical, services to those of the Complainant. Accordingly, the Panel is satisfied that the Respondent has indeed engaged in impersonation/passing off.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Panels have held that the use of a domain name for illegal activity (*e.g.*, impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. See the Panel's comments under the second element above. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <fc2ppv.com>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: September 27, 2023