

ADMINISTRATIVE PANEL DECISION

Kevin Fream, Inc. v. Jeff Park (박준우)

Case No. D2024-3384

1. The Parties

The Complainant is Kevin Fream, Inc., United States of America (“United States”), represented by Kevin Fream, United States.

The Respondent is Jeff Park (박준우), Republic of Korea.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2024. On August 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 20, 2024, 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 (Whois Privacy Services by DOMAINCA) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 20, 2024 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 22, 2024.

On August 20, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On August 22, 2024, the Complainant requested English to be the language of the proceeding. On August 25, 2024, the Respondent agreed to the Complainant’s request.

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 in English on August 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2024. On September 19, 2024, the Respondent requested an extension of the due date for Response of one week. On September 19, 2024, the Center replied to the Respondent that as the due date for a response had passed, it cannot grant extension on the Response period but that the Panel would be made aware of such request, and will proceed with the Panel Appointment process.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 25, 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 a United States company established by Mr. Kevin Fream, a business, change and cyber media expert, speaker, and book author, and the CEO of the Complainant. According to the Complainant's website at the domain name <kevinfream.com>, registered on October 12, 2006, the term "cyberist" was coined by Mr. Fream. The Complainant also uses the domain name <matrixforce.com>, registered on June 11, 2005.

Mr. Fream is also the owner of the United States trademark "CYBERIST" with registration No. 3939463, applied for on May 19, 2018 and registered on January 1, 2019 for services in International Class 42, with claimed date of first use in commerce on February 2, 2001 (the "CYBERIST trademark").

There is no information about the activities of the Respondent apart from the fact that it is based in the Republic of Korea.

The disputed domain name was registered on July 31, 2002. It resolves to a webpage offering it for sale for a price of USD 1,000,000.

5. Parties' Contentions

A. Complainant

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

The Complainant states that the disputed domain name is identical or confusingly similar to its CYBERIST trademark, because it incorporates the same trademark. The Complainant submits that the first use in commerce of the CYBERIST trademark dates back to February 2, 2001, and states that evidence of use in commerce is available on the websites at the domain names <kevinfream.com> and <matrixforce.com>.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant points out that the disputed domain name currently resolves to a webpage where it is offered for sale. According to the Complainant, the absence of any active use for a bona fide offering of goods or services underscores the Respondent's lack of rights or legitimate interests in the disputed domain name. The Complainant adds that the Respondent, as an entity, has not been commonly known by the disputed domain name, which corresponds to the Complainant's registered trademark. The Complainant notes that the Respondent's lack of any association or identity with the term "cyberist" further indicates that the Respondent does not possess rights or legitimate interests in the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration. The Complainant points out that the disputed domain name is listed for sale on a domain resale platform. According to the Complainant, the Respondent's actions in offering the disputed domain name for sale demonstrate an intent to profit financially by exploiting the Complainant's trademark rights.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions.

6. Discussion and Findings

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 Complainant has shown rights in respect of the CYBERIST trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

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

B. Rights or Legitimate Interests

Since the Complainant has failed to establish that the disputed domain name was registered in bad faith, it is not necessary to address this section.

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 Complainant's CYBERIST trademark.

The Complainant claims that the Respondent has registered and used the disputed domain name in bad faith primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration. In support this contention, the Complainant points out that the disputed domain name is listed for sale on a domain resale platform for the price of USD 1,000,000.

The disputed domain name was registered by the Respondent, apparently based in the Republic of Korea, in 2002, while the Complainant's CYBERIST trademark was registered (in the United States in 2019) with claimed date of first use in commerce on February 2, 2001. As noted in *Dow Jones & Company, Inc. v. Idea Studios LLC dba Envent*, WIPO Case No. [D2009-1033](#), and *Franki Global Inc. v. Privacy service provided by Withheld for Privacy ehf / Golden Dream, The Stay Gold Co / Samantha Jurashka*, WIPO Case No. [D2021-2901](#), the date of first use in commerce claimed on a trademark application is of limited evidentiary value in administrative proceedings brought under the Policy. For the purposes of the present proceeding, this date amounts to a mere assertion which would still require to be suitably evidenced.

The Complainant has not submitted in this proceeding any evidence about its use of the CYBERIST trademark, and only states that evidence of its use in commerce is available on the Complainant's websites at the domain names <kevinfream.com> and <matrixforce.com>. The Panel visited these two websites and did not find there any evidence about the use and the public recognition of the CYBERIST trademark at the time of registration of the disputed domain name in 2002. The Panel also notes that the domain names <kevinfream.com> and <matrixforce.com> were registered in 2006 and 2005, which was after the registration of the disputed domain name in 2002. The Complainant's website at the domain name <kevinfream.com> claims that the term "cyberist" was coined by Mr. Fream, without specifying when that happened and without referring to any independent source to confirm this argument. A simple Internet search for the term "cyberist" shows its use by the Complainant, but the results also identify third party online locations where the term is used as a general reference to cyber professionals or to persons immersed in the Internet culture and involved in things having to do with the Internet.

As discussed in section 3.8.2 of the [WIPO Overview 3.0](#), in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the disputed domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application. In the present case, the Complainant does not claim that any of the above circumstances has taken place, and the evidence in the case does not show that any of them existed in 2002, when the disputed domain name was registered.

Taking all the above into account, and considering the geographic locations of the Parties and critically how distant in time is the registration of the disputed domain name in 2002 from the application date of the Complainant's trademark in 2018, the Panel finds no support in the evidence presented for a finding that the Respondent knew of the Complainant in 2002, when it registered the disputed domain name, and that this registration targeted the then-unregistered CYBERIST trademark of the Complainant. This necessarily leads to the conclusion that it has not been established that the Respondent registered the disputed domain name in bad faith.

Since the Policy contains a cumulative requirement for the Complainant to establish registration and use of the disputed domain name in bad faith, it is not necessary to address the issue of whether the disputed domain name is being used in bad faith, and the Panel finds that the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: October 9, 2024