

ADMINISTRATIVE PANEL DECISION

Decos Beheer B.V. v. Sergio Nunez, Omega One Developers
Case No. D2025-1582

1. The Parties

The Complainant is Decos Beheer B.V., Netherlands (Kingdom of the), represented by NLO Shieldmark B. V., Netherlands (Kingdom of the).

The Respondent is Sergio Nunez, Omega One Developers, United States of America (“United States” or “U.S”).

2. The Domain Name and Registrar

The disputed domain name <getfixi.app> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2025. On April 22, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 23, 2025, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 April 30, 2025. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2025. The Response was filed with the Center on May 25, 2025.

The Center appointed John Swinson as the sole panelist in this matter on May 28, 2025. 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 hardware and software developer from Netherlands (Kingdom of the). The Complainant operates a public space reporting app called the Fixi app. The Complainant's Fixi app was developed for government municipalities to allow residents to make reports to their local municipality, for example, in respect of broken street lights. According to the Complainant's website located at <decos.com/en/fixi/free>, "The convenience of Fixi is now available for every Dutch, German and Spanish municipality at no cost! On this page, we explain how to handle a report, maintain an overview through Fixi, and communicate with residents".

The Complainant owns registered trademarks for FIXI including United States Trademark Reg. No. 4,869,663 that was filed on February 10, 2015, and registered on December 15, 2015. This registration covers goods and services in classes 9 and 42.

The disputed domain name was registered on January 13, 2022.

The Respondent is a business from Austin, Texas. The Respondent operates a business in the Austin area to provide roadside assistance to motorists, for example, in respect of flat tires and dead batteries. The Respondent's business operates under the branding FIXI. The Respondent's primary way to provide services to its customers is via its app which is branded as FIXI. The Respondent's website, at the disputed domain name, states: "Fixi is a mobile app based marketplace that connects a stranded driver needing roadside assistance, to a vehicle service provider on the road, and allow drivers to continue with their destination".

It is unclear exactly when the Respondent launched its business. The Respondent has provided links to YouTube videos regarding the Respondent's FIXI service, including a video dated January 25, 2024, where the founder of the Respondent is pitching for investors and partners, and a video of a television news station report from November 29, 2023, which appears to relate to the launch of the Respondent's service. These videos clearly relate to the Respondent's FIXI app and display the Respondent's FIXI logo. The Respondent also provided a draft and undated Letter of Intent with a distribution partner that stated that the "target date to begin offering Fixi memberships will be May 8, 2023".

The Respondent also provided evidence of its use of the FIXI branding, including on hats, uniforms and brochures.

The Complainant's attorney wrote a letter of demand to the Respondent on August 15, 2023, regarding use of the disputed domain name. The Respondent did not respond to that letter.

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.

Notably, the Complainant contends that requests by e-mail directed to the Respondent remained unanswered. The disputed domain name was updated after the Complainant sent a cease-and-desist letter to the Respondent. This proves that the Respondent was still active in relation to the disputed domain name while they were aware of the infringement.

The Complainant also contends that the Respondent does not own prior trademarks for FIXI or GETFIXI in any jurisdiction; neither are they commonly known by this name.

The Complainant asserts that the disputed domain name is almost identical to its registered trademark, and the addition of the term “get” in the domain name is solely descriptive. The fact that this is solely descriptive is confirmed by the actual use, as the Respondent only uses the identical name FIXI (and not “get”).

B. Respondent

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

In summary, the Respondent makes the following submissions:

The Respondent respectfully submits clear evidence of legitimate use, distinct industry use, and absence of bad faith. The Respondent is a family-owned and operated company, operating with integrity and dedication to providing honest, reliable services.

The substantial differences between the Complainant’s FIXI trademark and the disputed domain name eliminate any realistic likelihood of consumer confusion. The Complainant’s allegation of confusion is unsupported by marketplace evidence, which is necessary to justify a transfer of the disputed domain name.

The Respondent registered the disputed domain name on January 13, 2022, without knowledge of the Complainant’s European trademark.

The Respondent’s app and business, “Fixi”, provides bona fide vehicle-related roadside assistance and automotive services in Texas. This use commenced prior to any notice of the Complainant’s claims. The Respondent has established a well-documented history of public and ongoing use, including app store listings (Apple and Google), a company website, and active social media engagement, all specifically tied to vehicle maintenance, repair, and roadside services.

The Respondent’s automotive and roadside service app operates solely within the U.S. market, distinctly separate from the Complainant’s European municipal reporting solutions.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a 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.

The onus of proving these elements is on the Complainant.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants and respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any bona fide documentary or other credible evidence.

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms (here, "get") 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.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

The Complainant provided evidence of its letter to the Respondent dated August 15, 2023. This is a notice of dispute. The Respondent provided evidence of a Letter of Intent (that included the branding "fixi") used to sign up a distribution partner that stated that the "target date to begin offering Fixi memberships will be May 8, 2023". This strongly suggests that the Respondent was at least making demonstrable preparations to use the FIXI branding prior to the demand letter from the Complainant. Even if the Panel was to consider that both companies are operating software, ultimately the Panel considers that under the Policy, the Respondent's business purpose is unrelated to the Complainant's business field. Beyond the use of software in the provision of their services, the only commonality would be that both parties are to some extent connected to the idea of "fixing" different things, which seems a reasonable explanation for the selection of the term "fixi".

The Panel finds that, before notice to the Respondent of the dispute, the Respondent used or made demonstrable preparations to use a name corresponding to the disputed domain name in connection with a bona fide offering of services for the purposes of the Policy. [WIPO Overview 3.0](#), section 2.2.

The Respondent's use of "fixi" appears to the Panel to be bona fide and genuine under the Policy for its roadside assistance service.

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

C. Registered and Used in Bad Faith

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

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 trademark.

The Respondent states that "Respondent did not know and had no reasonable way of knowing about Complainant's European trademark".

The Complainant is located in Europe and target's European customers. The Complainant's app is for public space reporting to local government, for example, in respect of a broken streetlight. The Respondent's service is a roadside assistance service for motorists in Texas, United States.

The Complainant provided no evidence of use by the Complainant of FIXI in the United States. The Complainant's United States trademark registration does not claim use in the United States.

There is no evidence before the Panel that suggests that the Respondent (a resident of Texas, United States) was likely aware of the Complainant or the Complainant's FIXI trademark when the Respondent registered the disputed domain name. There is no evidence of the Complainant's use or advertising of the FIXI trademark in the United States, and the extent of such use or advertising if any. There is no evidence of any sales by the Complainant of any products or services under the FIXI trademark in the United States.

Accordingly, the Panel does not consider that there is sufficient evidence to conclude that the Respondent registered the disputed domain name knowing of or because of the Complainant or the Complainant's FIXI trademark.

In respect of use, the Complainant asserts: "By using an identical name for identical goods and services (software and software as a service), the Respondent intentionally tries to mislead or divert consumers to their application to tarnish the trademark at issue". However, there is no evidence that the Respondent intended to do so.

It is improbable that the Respondent would wish to divert Internet users in Europe looking for the Complainant's local government reporting tool to a website for a roadside assistant app for Texas motorists.

The look and feel of the Respondent's branding is very different to the Complainant's branding.

Accordingly, the Panel does not consider that there is sufficient evidence to conclude that the Respondent has used the disputed domain name in bad faith to take advantage of the Complainant's FIXI trademark.

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.

The Complaint lacked supporting evidence, made conclusory statements without providing reasoning therefore, cited no prior cases and did not refer to [WIPO Overview 3.0](#).

However, the Respondent did not respond to the Complainant's letter of demand. The Complainant does have a registered trademark in the United States.

Looking at the totality of the circumstances, the Panel cannot conclude that the Complaint was brought in bad faith. The Panel does not make a finding of Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: June 6, 2025