Decision for dispute CAC-UDRP-101048

Case number	CAC-UDRP-101048
Time of filing	2015-09-10 10:36:53
Domain names	4finance.biz

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	AS "4finance"

Complainant representative

Organization	Zvērinātu advokātu birojs "Vilgerts"

Respondent

Organization	4Finance Limited

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided proceedings which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the registered holder of the following trademarks:

(i) 4finance (figurative), Community Trade Mark, filing date 22 February 2013, registration date 29 October 2013, trademark no. 011598018, registered for services in class 36 including insurance, financial affairs, monetary affairs; real estate affairs;

(ii) 4finance (figurative), Latvian national trade mark, filing date 10 December 2012, registration date 20 June 2013, trademark no. M 66 158, registered for services in class 36 including financial affairs, monetary affairs;

(iii) 4finance (word) Latvian national trade mark, filing date 10 December 2012, registration date 20 July 2013, trademark no. M 66 277, registered for services in class 36 including financial affairs, monetary affairs.

All such trademarks are herein collectively referred to as “Complainant's trademarks”.

Moreover, the Complainant owns a registered domain name 4finance.com, which is used for the official Complainant’s website.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

The Complainant is a part of 4finance group ("group"). Established in 2008, 4finance is one of the largest online and mobile consumer lending groups in Europe, with its headquarters in Latvia. Operating in 10 European countries and expanding outside the continent, it has over 1500 permanent employees in total, 4 million of registered customers, and over EUR 2.5 billion in single payment and instalment loans issued to date. The group's holding company 4finance Holding S.A. has been rated by Moody's and Standard and Poor's.

On 15 February 2012, the group established a UK subsidiary 4finance Limited, which changed its name to V7 Limited due to restructuring and ownership changes on 7 May 2015.

On 1 September 2014 (this date has been consulted with https://beta.companieshouse.gov.uk/company/FC032153, the claimant provides slightly different date), the group registered SIA 4finance IT branch in the UK.

The group operates under the corporate brand name "4finance". For this purpose the Complainant is an owner of a domain name <4finance.com> registered on 26 January 2006, which is used as the group's official website. In 2012 and 2013 the Complainant has registered national figurative and word trademarks for "4finance" with the Latvian Patent Office as well as a figurative "4finance" Community trade mark (for details see "Identification of Rights").

The disputed domain name <4finance.biz> was registered on 13 December 2014 and is held by the Respondent. The Respondent is a private company registered in England and Wales established on 16 June 2015. The disputed domain name has been used to offer, inter alia, investments opportunity to earn 2.6-3% daily for 90 business days depending on the investment size.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT:

DOMAIN NAME IS IDENTICAL AND CONFUSINGLY SIMILAR TO THE PROTECTED MARK

The Complainant states that the domain name <4finance.biz> is identical to the Complainant's trademarks, using the identical trademark denomination and adding the generic top level domain identifier ".biz" at the end. Such a generic identifier does not distinguish the disputed domain name from the Complainant's trade mark.

Further, the Respondent uses the disputed domain name for services under the same category of services - financial services - for which the Complainant's trademarks are registered, which constitutes a presumption of likelihood of confusion. In addition, the Respondent registered its company address at the premises of Complainant´s SIA 4finance IT branch in UK, which also causes confusion on the part of the Complainant's and 4finance group's business partners.

The Complainant was recently successful in enforcing its rights in the "4finance" trademark against Respondent, when, following Complainant's trade mark violation reports, Facebook disabled Respondent's Facebook page in September 2015.

RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Complainant states that:

(i) the Respondent is not commonly known by the disputed domain name, nor does it holds any trade mark registrations or has any other intellectual property rights in the "4finance" denomination;

(ii) the Respondent has not been licensed, contracted or granted authorisation by the Complainant to register and use the

disputed domain name;

(iii) the Respondent has not used the disputed domain name in connection with bona fide offering of goods or services nor has it been used for any legitimate or non-commercial purposes. By using the domain name identical to the Complainant's trade mark, the Respondent clearly attempted to divert traffic intended for the Complainant's website to its own for commercial gain.

The Complainant adds that the Respondent used the disputed domain name to offer so-called "high-yield investment services", typically associated with fraudulent investment operations in a Ponzi-like schemes. Such use is incompatible with Complainant's image, having damaging effect on the reputation of the Complainant's trademark.

DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant states that the Respondent used the disputed domain name to disrupt the professional activities of Complainant and Respondent's actions in the UK could potentially be criminally actionable as fraud by false representation under Article 2 of the Fraud Act 2006, which is now being investigated.

The Complainant does not find the following facts to be coincidental:

(i) The Respondent's company name is identical to the previous company name of V7 Limited (i.e. 4finance Limited, before it has been renamed), an affiliated company of the 4finance group;

(ii) The Respondent was incorporated in England and Wales on 16 June 2015, which is only 40 days after V7 Limited changed its initial company name

(iii) The Respondent´s company has the same registered address as V7 Limited and SIA 4finance IT branch in UK. The Respondent also claims on its website that customers can visit its office at that address. According to the Complainant's investigation though the Respondent has no physical premises at the mentioned address.

(iv) The Complainant has never had any connection with Respondent or its appointed director John Trevor Newham;
Given the above, the Complainant states that the Respondent most likely knew about the rights of Complainant and intended to attract customers by taking unfair advantage of the distinctive character and reputation of the well-known "4finance" trade mark, inter alia, by diverting web traffic intended for the Complainant's website to its own for commercial gain.

As of the date of submission of this Complaint, the Respondent has not replied to the cease and desist letter sent to 4Finance Limited by post and email on 24 August 2015. On the other hand, the Respondent acknowledged the takedown of its Facebook content by removing the Facebook button from the disputed domain.

The Complainant has presented to the Panel the following evidence, which has been assessed by the Panel:

1) Various information on the Complainant´s business activities
2) Various certificates on incorporation of companies, name changes and registrations
3) Excerpts from OHIM and Latvian Patent Office databases for trademarks
4) Screenshots of Respondent´s website and WHOIS database
5) Evidence regarding enforcement of Complainant´s rights on Facebook
6) Cease and Desist Letter sent to Respondent
7) Various evidence supporting additional arguments.

RESPONDENT:
The Respondent has not provided any response to the complaint.

The Panel concluded that the disputed domain name is identical to trademarks in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, see "Principal Reasons for the Decision".

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii)of the Policy.

For details, see "Principal Reasons for the Decision".

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii)of the Policy.

For details, see "Principal Reasons for the Decision".

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

RIGHTS

The disputed domain name and the Complainant's trademarks are identical.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com" or ".biz") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration. Therefore, the Panel concludes that the Complainant has satisfied paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

Based on general Internet search, the Respondent is not commonly known by the disputed domain name, on contrary, the majority of results lead to the Complainant´s domain names.

Albeit the Respondent company name is " 4Finance Limited", it does not necessarily constitute rights or legitimate interest in the "4finance" denomination, since the Respondent selected its company name which was identical to the previous company name of V7 Limited (before it has been renamed), i.e. a company belonging to Complainant's group.

In addition, given the fact, that the Respondent, in particular, decided to use a domain name which is identical with trademarks and signs of the Complainant, selected its company name which is identical to the previous company name of V7 Limited (before it has been renamed), choose the same company seat as the Complainant used for its UK subsidiary before the ownership change, and offered potentially fraudulent investment opportunity (see also below), the Panel concludes that the domain name was not intended to be used in connection with a bona fide offering of goods or services as required by the Policy.

To conclude, the Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However,

the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Panel contends that the bad faith element in this particular case is closely connected with the “confusing similarity” and “false association” concepts. Even though the disputed domain name and Complainant's trademarks are identical, confusing similarity or false association with Complainant's trademarks business may not be always present. This applies, in particular, if the domain name corresponds to (or otherwise resembles) a common term, which is widely used in a particular language. In such case, the internet public would likely consider such term as descriptive and as a result would not necessarily associate it with the Complainant and its business or trademarks. This would likely imply that (in absence of other facts indicating otherwise) that the disputed domain name has neither been registered nor is being used in bad faith.

In the Panel’s view, the Complainant’s trademarks consisting of the “4FINANCE” denomination are prima facie rather non-distinctive. However, the Complainant has shown that through extended use, large-scale marketing efforts (promotion and advertising) spent by the Complainant, its trademarks have become so well known as to acquire the requisite degree of distinctiveness taking them out of their original generic nature.

Also, the Respondent registered his company with the same name and same company seat as Complainant´s London subsidiary used (i.e. 4finance limited) before restructuring and which is still a company seat of V7 Limited (originally 4finance limited).

In addition, based on evidence provided by Complainant it is substantiated that Respondent used the disputed domain name to offer services which may be potentially classified as fraudulent schemes, promising the visitors to earn 2.6-3% daily for 90 business days depending on the investment size.

Thus, the panel contends that, on a balance of probabilities, the Respondent performed all these steps (incl. registration and use of the disputed domain name) with an intention to create false association between Respondent's and Claimant's business and trademarks.

As a result, the panel finds it grounded that the Respondent registered and used the disputed domain name in bad faith, namely with the aim to (i) take an unfair advantage of the distinctive character and reputation of the Claimant's trademarks, in particular the “4finance” trade mark, with an attempt to attract for commercial gain Internet users to the Respondent´s website benefiting from the likelihood of confusion with the Complainant's business and trademarks and (ii) disrupt the business of the Complainant by raising impression that the Complainant is involved in potentially fraudulent schemes.

Thus, the Panel has taken a view that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **4FINANCE.BIZ**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

DATE OF PANEL DECISION 2015-10-22

Publish the Decision