Decision for dispute CAC-UDRP-106196

Case number	CAC-UDRP-106196
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Domain names	wwwfoncia.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	EMERIA EUROPE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	TotalDomain Privacy Ltd

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of several trademarks including the following:

- FONCIA, international figurative mark No. 554821 registered on June 6, 1990, in classes 36, 37 and 42;
- FONCIA, international word mark No. 941643 registered on May 4, 2007, in classes 35, 36, 42 and 45;
- FONCIA, European Union word mark No. 001470210 registered on March 6, 2001, in classes 16, 36, 37, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant, EMERIA EUROPE, formerly FONCIA GROUP, is a French company that offers real estate services.

The Complainant is the owner of several trademark registrations consisting of or including the sign FONCIA, such as the following:

- international mark No. 554821 registered on June 6, 1990, in classes 36, 37 and 42;
- international word mark No. 941643 registered on May 4, 2007, in classes 35, 36, 42 and 45;
- European Union word mark No. 001470210 registered on March 6, 2001, in classes 16, 36, 37, 38, 41 and 42.

The Complainant operates its official website through several domain names including <foncia.com>.

The disputed domain name <wwwfoncia.com> was registered on February 13, 2007, and resolves to a parking page with pay-per-click links.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to a trademark in which it has rights.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, it has never given any authorization to anyone to make use of or apply for registration of the disputed domain name and has no affiliation with the Respondent. The Complainant further contends that the website linked to the disputed domain name provides links to real estate services, which are the same services that are offered by the Complainant and that this cannot amount to a bona fide commercial use. According to the Complainant, the Respondent has sought to take commercial advantage of the goodwill associated with the Complainant's trademarks, domain name and sign.

Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent does not make fair use of the disputed domain name which was only registered to mislead the Complainant's clients with typosquatting and for the purpose of selling the disputed domain name.

RESPONDENT:

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

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown 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).

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant shows to be the holder of registered FONCIA marks, which is used in connection with its real estate services business, even though the trademark registers do not seem to show the Complainant's new company name yet. In the Panel's view, it is sufficiently established that there is a trademark in which the Complainant has rights.

The disputed domain name incorporates the Complainant's FONCIA trademark in its entirety, merely adding the letters "www". In the Panel's view, this addition does not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 WIPO Overview 3.0; IM PRODUCTION v. Xue Han, CAC Case No. 104877 <isabel-marantus.com>).

Moreover, it is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent appears to use a privacy service as it is named "TotalDomain Privacy Ltd". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the WIPO Overview 3.0). The disputed domain name consists of the letters "www" combined with the Complainant's FONCIA mark. In the Panel's view, the addition of the letters "www" does nothing to avoid confusion with the Complainant's mark. On the contrary, these letters correspond to the popular subdomain "www" which is widely used as the first part of a URL. The Panel finds that Internet users could easily confuse the disputed domain name with the URL that redirects to the Complainant's official website, "www.foncia.com". Therefore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute fair use in these circumstances.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name resolves to a parking page containing pay-per-click ("PPC") links such as "Achat Immobilier".

Given the Complainant's real estate services business, the Panel finds that such PPC links may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the disputed domain name in connection with a bona fide offering of goods or services (see section 2.9 of the WIPO Overview 3.0)

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the FONCIA trademark when it registered the disputed domain name as:

- the disputed domain name incorporates the Complainant's distinctive FONCIA trademark in its entirely with the addition of the popular subdomain "www";
- some of the Complainant's marks have been registered more than 15 years before the disputed domain name;
- the Complainant shows it had already a strong presence in the real estate business before the registration of the disputed domain name.

In the circumstances of the present case, the Panel's considers that by using the disputed domain name to resolve to a parking page containing PPC links related to the Complainant's business, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the disputed domain name that is confusingly similar to the Complainant's trademark (as is the case here) constitutes bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the disputed domain name under its control (see section 3.5 of the WIPO Overview 3.0).

In the Panel's view, the fact that the disputed domain name is offered for sale for 6899 USD and the Respondent's use of a privacy service to hide its identity and contact details are further indications of bad faith.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **wwwfoncia.com**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2024-03-12

Publish the Decision