

ADMINISTRATIVE PANEL DECISION

Ferring B.V. v. Privacy Service Provided by Withheld for Privacy ehf /
Carolina Rodrigues
Case No. D2022-0206

1. The Parties

The Complainant is Ferring B.V., Netherlands, represented by Jacobacci Avocats, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Carolina Rodrigues, Panama.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 21, 2022. On January 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 2022 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 January 28, 2022.

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 February 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2022.

The Center appointed Michelle Brownlee as the sole panelist in this matter on February 25, 2022. 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 the owner of the following trademark registrations:

- European Union Trade Mark Registration Number 4030193 for the mark FERRING in connection with goods in International Classes 5 and 10, filed on September 16, 2004 and registered on September 11, 2006;
- United States Trademark Registration Number 76678965 for the mark FERRING in connection with goods in International Class 5, filed on July 2, 2007 and registered on August 4, 2009;
- International Registration Number 1275686 for the mark FERRING PHARMACEUTICALS and design (see below) in connection with goods and services in International Classes 5, 10, 42 and 45, registered on September 24, 2015.



The Domain Name was registered on April 6, 2021.

5. Parties' Contentions

A. Complainant

The Complainant states that it is part of the Ferring Group of biopharmaceutical companies, which specialize in reproductive medicine and women's health, gastroenterology and urology. The Complainant states that the Ferring Group was founded 71 years ago, operates subsidiaries in nearly 65 countries, and markets products in 110 countries around the world. The Complainant states that the Ferring Group had an annual turnover of nearly 2 billion Euros in 2020. The Complainant states that it owns more than 350 trademark registrations in numerous countries throughout the world for the trademarks FERRING, FERRING PHARMACEUTICALS and other trademarks that include the word FERRING.

The Complainant states that it also owns 288 domain names that include the word FERRING. The Complainant submitted printouts of search engine results that show that nearly all of the search engine results generated by the word "Ferring" refer to companies affiliated with the Complainant. The Complainant notes that a number of panels in other UDRP cases have determined that the Complainant has a substantial reputation.

The Complainant argues that the Domain Name is confusingly similar to its FERRING and FERRING PHARMACEUTICALS trademarks, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith. The Complainant offered evidence demonstrating that the Respondent offered the Domain Name for sale on the website "www.sedo.com" for a minimum bid of 899 United States dollars. Further, the Complainant presented evidence that attempts to access a website at the Domain Name directed the user to various different websites, many of which were blocked by antivirus software. The Complainant argues that this suggests that the sites may be used for phishing or distribution of malware.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of a domain name, a complainant must prove the following three elements:

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns rights in the FERRING and FERRING PHARMACEUTICALS trademarks. The addition of the letter string "phinc" in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Further, and the addition of the letters "ph" and "inc" creates additional similarity to the Complainant's FERRING PHARMACEUTICAL trademark, since "PH" may be viewed as an abbreviation of the word "pharmaceuticals." Under these circumstances, the Panel finds that the Domain Name is confusingly similar to the Complainant's FERRING and FERRING PHARMACEUTICALS trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides that a respondent can demonstrate rights to or legitimate interests in a domain name by demonstrating one of the following facts:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name at issue in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark at issue.

In this case, the Complainant has put forward a *prima facie* case and no evidence has been presented that the Respondent used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services; that the Respondent is commonly known by the Domain Name; that the Respondent is making a legitimate noncommercial or fair use of the Domain Name.

The Complainant presented evidence that the Domain Name is redirecting Internet users to web sites that are blocked by anti-virus software, which suggests that they are being used for malicious purposes, such as phishing or the distribution of malware. The Complainant has also presented evidence that the Respondent has offered the Domain Name for sale. The Respondent has not refuted these allegations and evidence. Under the circumstances, there is no basis to find that the Respondent has demonstrated rights to or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances are evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name at issue primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Complainant has demonstrated bad faith registration and use under paragraphs 4(b)(i) and 4(b)(iv) of the Policy. The Complainant presented evidence that the Domain Name is redirecting Internet users to websites that are blocked by anti-virus software, which suggests that they are being used for malicious purposes, such as phishing or the distribution of malware. The Complainant has also presented evidence that the Respondent has offered the Domain Name for sale for consideration greater than out-of-pocket costs.

Accordingly, the Panel finds that the Complainant has met its burden of demonstrating bad faith registration and use in this case.

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 Domain Name, <ferringphinc.com> be transferred to the Complainant.

/Michelle Brownlee/

Michelle Brownlee

Sole Panelist

Date: March 11, 2022