

ADMINISTRATIVE PANEL DECISION

Federal Express Corporation, FedEx Corporate Services, Inc. v. Domain Admin, Domain Privacy Service FBO Registrant / Kostiantyn Lakhonia
Case No. D2022-2000

1. The Parties

The Complainants are Federal Express Corporation and FedEx Corporate Services, Inc., United States of America (“United States”), represented by Baker & McKenzie, United States.

The Respondent is Domain Admin, Domain Privacy Service FBO Registrant, United States / Kostiantyn Lakhonia, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2022. On June 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 2 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainants on June 5, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on June 8, 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 Respondent of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 5, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on July 20, 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

Complainants are Federal Express Corporation and FedEx Corporate Services, Inc., (collectively "Complainant"). Complainant is a global shipping, delivery, and transportation company headquartered in Memphis, Tennessee. Complainant owns valid and subsisting registrations for the FEDEX trademark in numerous countries, including the trademark for FEDEX (Reg. Nos. 2192176, 2096998, and 1311503) in the United States, with the earliest priority dating back to December 25, 1984. Complainant uses the <fedex.com> domain name to resolve to its official website, where it offers its goods and services on the Internet.

Respondent registered the disputed domain name on October 20, 2020. At the time this Complaint was filed, the disputed domain name resolved to an active website which mimics the color scheme and trade dress of Complainant's official website, prominently displays a "FebEx" logo, and offers visitors putative "packing, storage, pricing, and moving" services.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the FEDEX trademark and has adduced evidence of trademark registrations in the United States, with earliest priority dating back to December 25, 1984. The disputed domain name is confusingly similar to Complainant's FEDEX trademark, according to Complainant, because it contains an intentional misspelling of Complainant's FEDEX trademark, replacing the letter "d" with the letter "b" and adding the suffix "moving".

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any affiliation or connection between Complainant and Respondent; the lack of evidence that Respondent has been commonly known by the disputed domain name; the lack of evidence that Respondent is making any legitimate noncommercial or fair use of the disputed domain name; and evidence Respondent is using the disputed domain name in connection with a fraudulent scheme to impersonate Complainant and defraud unsuspecting customers.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including that: Respondent had constructive notice and actual knowledge of Complainant's rights in the FEDEX trademark prior to registering the disputed domain name; Respondent has used the disputed domain name to perpetrate an illegal scam; Respondent did not respond to Complainant's correspondence; Respondent used a privacy protection service to register the disputed domain name; Respondent may have provided false contact information; and Respondent's continued ownership of the disputed domain name represented an abusive threat hanging over Complainant, having already once relaunched Respondent's website and illegal scam following a successful webhost takedown letter from Complainant.

B. Respondent

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

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 ("A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true [...] UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."); see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the FEDEX trademark has been registered in the United States with priority dating back to December 25, 1984. Thus, the Panel finds that Complainant's rights in the FEDEX trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's FEDEX trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's FEDEX trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the trademark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

Combination with the term "moving" does not prevent a finding of confusing similarity between Complainant's FEDEX trademark and the disputed domain name. WIPO Overview, section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

Furthermore, it is well established that domain names which consist of common, obvious, or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. WIPO Overview, section 1.9 ("Examples of such typos include (i) adjacent keyboard letters, (ii)

substitution of similar-appearing characters ... (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers”). See *e.g. Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) (“This is clearly a ‘typosquatting’ case where the disputed domain name is a slight misspelling of a registered trademark to divert internet traffic ... In fact, the domain name comprises the Complainant’s trademark ... with a single misspelling of an element of the mark: a double consonant “s” at the end.”) See *e.g. General Electric Company v. mr domains (Marcelo Ratafia)* Case No. [D2000-0594](#) (“In the Panel’s opinion ‘www-’ used in this context is a generic term which does nothing to reduce the potential for confusion, and therefore the panel is of the opinion that the Domain Names are for all intents and purposes identical to the registered trademark.”) In this Panel’s view and considering the totality of the evidence proffered by Complainant, Respondent’s replacement of the letter “d” with the letter “b” is clearly an intentional misspelling of Complainant’s FEDEX trademark.

In view of Complainant’s registration for the FEDEX trademark, and Respondent’s clear attempt at typosquatting on the FEDEX trademark, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by the Whois data for the disputed domain name as “Kostiantyn Lakhonia”, is not commonly known by the disputed domain name or Complainant’s FEDEX trademark.

Based on the undisputed facts and circumstances in the record before it, the Panel finds that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. This is especially the case where a disputed domain name is so obviously connected with a complainant and its products, the very use, by a registrant with no connection to a complainant suggests opportunistic bad faith. The Panel concludes from the record that Respondent clearly had Complainant’s FEDEX trademark in mind when registering the disputed domain name, and that Respondent most likely registered domain names in order to exploit and profit from Complainant’s trademark rights. Indeed, Respondent has adopted a stylized logo for “FebEx” and an overall look and feel to its website that are both nearly identical to Complainant’s FEDEX logo and official website trade dress. A respondent who intentionally adopts a third party’s mark as a domain name cannot claim the benefit of Paragraph 4(c)(i) of the Policy to establish rights or legitimate interests to the domain name based on its mere use of the domain name to offer goods or services prior to the notice of a dispute. *Scania CV AB v. Leif Westlye*, WIPO Case No. [D2000-0169](#); see also *Drexel University v. David Brouda*, WIPO Case No. [D2001-0067](#) (rights or legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the complainant).

UDRP panels have also categorically held that use of a domain name for illegal activity—including the impersonation of the complainant and other types of fraud—can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent’s website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13. See *e.g. Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) (“Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives”). See also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) (“In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of

the disputed domain names.”) Complainant has provided strong evidence to establish Respondent’s fraudulent scheme, including most notably an independent news article describing how Respondent’s putative service operates: “Once the items were picked up [on a moving truck], the company went silent.... [and] News 6 did not get a response from anyone at FebEx despite multiple attempts... [and] Our investigators found FebEx ... has 43 trucks with only one driver.” Although a subsequent update suggests the items from this particular article were ultimately delivered, the Panel takes judicial notice of Respondent’s “F” rating by the Better Business Bureau, and numerous consumer complaints substantiating Complainant’s allegations. Only further strengthening those same allegations is Respondent’s refusal to participate in these proceedings.

To this end, the second and third elements of the Policy may be assessed together where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of Respondent’s clear-cut targeting of Complainant and Complainant’s FEDEX trademark, as well as Complainant’s uncontroverted evidence establishing that Respondent is engaged in an illegal scheme to defraud consumers, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

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

Where a complainant’s trademark is widely known for purposes of the Policy, including in a particular industry, or highly specific, and respondents cannot credibly claim to have been unaware of complainant, panels have inferred that respondents knew, or should have known, that their registration would be identical or confusingly similar to a complainant’s trademark. Furthermore, where parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating a respondent’s domain name registration, panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant’s trademark, or circumstances that corroborate respondent’s awareness of the complainant’s trademark. [WIPO Overview 3.0](#), section 3.2.2. When the disputed domain name was registered on October 20, 2020, Respondent had constructive knowledge of Complainant’s pre-existing rights in Complainant’s FEDEX trademark under United States law. See e.g., *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent’s awareness of Complainant and Complainant’s FEDEX trademark, including

Respondent's use a "FebEx" logo designed to mimic Complainant's FEDEX logo, and Respondent's decision to mimic the color scheme and trade dress from Complainant's official website.

Furthermore, UDRP panels have categorically held that registration and use of a domain name for illegal activity - including impersonation, passing off, and other types of fraud - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant." *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#); see also *GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). Circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity, including evidence that: Respondent has intentionally mimicked Complainant's logo and trade dress; Respondent's putative services have prompted numerous consumer complaints; Respondent has masked its identity in WhoIs data to avoid being contactable; and independent third party sources describe fraudulent activity perpetrated by Respondent. [WIPO Overview 3.0](#), section 2.13.2.

In addition, the act of "typosquatting" or registering a domain name that is a common misspelling of a mark in which a party has rights has often been recognized as evidence of bad faith registration *per se*. WIPO Overview, section 3.2.1 ("Particular circumstances UDRP panels take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely known mark ..."). See also *Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#) (citing *National Association of Professional Baseball Leagues, d/b/a Minor League Baseball v. Zuccarini*, WIPO Case No. [D2002-1011](#)); *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting", of itself, is evidence of the bad faith registration of a domain name). The Panel concurs with this approach. It is evident that Respondent registered and used the typosquatted disputed domain name to intentionally attract, for commercial gain, Internet users to the website linked to disputed domain name in a manner that confuses and misleads Internet users. Thus, Respondent's bad faith is established by Respondent's attempts to profit from mistakes by Internet users, such as typographical errors when inputting the term "FebEx" instead of FEDEX into a web browser or search engine.

The Panel further concludes that failure by Respondent to answer Complainant's cease and desist letter "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith." See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the Panel, is only further confirmation of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Where it appears that a respondent employs a privacy or proxy service merely to obfuscate enforcement efforts and evade UDRP proceedings filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct).

Finally, Respondent's website "www.febexmoving.com" was deactivated following a takedown request by Complainant. As of the date of this Decision, Respondent's website remains deactivated. The Panel takes this as strong corroborating evidence of Respondent's bad faith. *LEGO Juris A/S v. Ammar Briouel / Brahim Mahjoubi*, WIPO Case No. [D2019-0750](#) (involving bad faith indicia based upon website suspension following

a takedown request by Complainant).

In view of all of the foregoing, the Panel concludes that Complainant has established the third element of the Policy.

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 disputed domain name, <febexmoving.com>, be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: August 3, 2022