

## **ADMINISTRATIVE PANEL DECISION**

**FINN.no AS v. Christian Mathisen, Online Comet ApS**  
**Case No. D2022-2527**

### **1. The Parties**

The Complainant is FINN.no AS, Norway, represented by HJORT Advokatfirmaet Hjort DA , Norway.

The Respondent is Christian Mathisen, Online Comet ApS, Denmark.

### **2. The Domain Name and Registrar**

The disputed domain name <finndyr.com> is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 the Complainant on July 21, 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 amendment to the Complaint on July 23, 2022.

The Center verified that the Complaint together with the amendment to the 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 July 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2022. The Respondent did not submit any formal response. The Respondent sent an informal communication to the Center on July 23, 2022. The Center received informal communications from a third party on July 25, 2022, and on July 26, 2022. Accordingly, the Center notified the Parties that it would proceed to panel appointment on August 17, 2022.

The Center appointed Petter Rindforth as the sole panelist in this matter on August 29, 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, based in Norway, offers online buying and selling services, and is the owner of a number of national Norwegian trademark registrations including the word FINN, such as:

- Norwegian national trademark No. 192448 FINN (word), registered on August 27, 1998, for services in classes 35, 36, 38, 39, 41, and 42;
- Norwegian national trademark No. 222309 FINN TORGET (word), registered on December 18, 2003, for services in classes 35, 36, 38, 39, and 42; and
- Norwegian national trademark No. 244561 FINN TJENESTER (word), registered on February 28, 2008, for services in classes 35 and 38.

The disputed domain name <finndyr.com> was registered on January 6, 2002, and resolves to a website that sells/offers different kinds of pets.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant owns, in addition to the Norwegian national trademark No. 192448 FINN (word) a series of Norwegian national trademarks for FINN in combination with a descriptive word, namely FINN MC, FINN REISE, FINN BÅT, FINN BOLIG, FINN JOBB, FINN TORGET, FINN TJENESTER, FINN BEDRIFTER, FINN LANDBRUK, FINN SØK and FINN EIENDOM, registered in *inter alia* for class 35 services.

The Complainant also owns the domain name <finn.no>, and the related website is one of the largest online marketplace and classified ads service in Norway, with sections devoted to classified ads for *inter alia* jobs, real property and travel, as well as classified ads for animals.

The disputed domain name consists of: (i) "finn", which is identical to the FINN trademark and domain name, (ii) the descriptive Norwegian term "dyr" (in English: "animal"), and (iii) the generic Top-Level Domain ("gTLD") ".com". The combination of FINN trademark and a descriptive word in the disputed domain name increases the likelihood of confusion, because users expect to find the Complainant's trademarks in the same pattern.

The Complainant previously prevailed against the Respondent in a dispute over the Respondent's domain name <finndyr.no> before the Norwegian ADR Committee. Prior to cancellation of that domain name, the Complainant received requests and complaints from customers of the Respondent who incorrectly believed that the domain name <finndyr.no> was owned by the Complainant and that they had entered into contracts with the Complainant. Because the only difference between the domain name <finndyr.no> and the disputed domain name <finndyr.com> is the country code Top-Level Domain ("ccTLD") ".no" and the gTLD ".com", these examples of actual confusion substantiate that there is a likelihood of confusion between the disputed domain name and the FINN trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name, as the Respondent is not commonly known by the disputed domain name and has not acquired any trademark or service mark rights to the same. Further, the Respondent only uses the disputed domain name in relation to

Norway, where the FINN Trademark/s is/are registered and famous. The Respondent's website on the disputed domain name is exclusively offered in the Norwegian language, the service offered on the website relates to advertisements for animals in Norway, and consists mainly or entirely of classified ads for animals copied from the Complainant's website and database of such advertisements on the domain name <finn.no>.

The Respondent requires users to register accounts on its website on the disputed domain name before they can click on the links in the copied advertisements. Once registered, users clicking on these links are forwarded to the original advertisement on the Complainant's website. Such registered users may also create classified ads on the Respondent's website, seemingly for free or for some insignificant amount. However, they later discover that they are charged an ongoing subscription fee for the service. Consequently, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent uses the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the FINN trademark as to the source, sponsorship, affiliation or endorsement of its website or of a service on the disputed domain name. The Complainant's trademark rights and services predate the Respondent's registration of the disputed domain name. The FINN trademarks are among the most famous trademarks in Norway for online classified ads. The Respondent's website at the disputed domain name is exclusively offered in the Norwegian language, directed at Norwegian users and relating to online classified ads for animals in Norway.

Prior to submitting the Complaint, the Complainant tried to resolve the dispute amicably by sending a cease and desist letter to the Respondent on June 22, 2022. The Respondent has not responded. This shows, also in light of the previous similar domain name dispute between the parties in which the Complainant prevailed, that the Respondent is not acting in good faith.

The Complainant requests that the Panel issue a decision that the disputed domain name be cancelled.

## **B. Respondent**

The Respondent sent an informal communication to the Center on July 23, 2022, stating: "We're unsure how to reply to your email. If there is a complaint regarding our domain, Finndyr.com, we would like to fight the complaint. We're not interested in giving up our domain as it is being actively used by one of our sites. How do we proceed?". The Respondent did not submit a formal response.

The Center received informal communications from a third party on July 25, 2022, and on July 26, 2022, asking what to do or what the customer needs to do and asking about receiving the Complaint.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, a complainant must prove each of the following:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant is the owner of the FINN trademark, registered in Norway.

The relevant part of the disputed domain name is “finndyr”, as it is well established in previous UDRP decisions that the added gTLD – being a required element of every domain name – may be irrelevant when assessing whether or not a domain name is identical or confusingly similar to a trademark.

The Panel notes that the disputed domain name consists of the Complainant’s trademark FINN, in combination with the term “dyr”. The addition of a word to a complainant’s trademark in a disputed domain name, does not prevent a finding of confusing similarity.

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant’s trademark FINN and thus, the Complainant has satisfied the first element of the Policy.

## **B. Rights or Legitimate Interests**

Once a complainant establishes a *prima facie* case of the second element of the Policy, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

By not submitting a Response, the Respondent failed to invoke any circumstance which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name or to rebut the Complainant’s *prima facie* case that it lacks rights or legitimate interests.

The Respondent has no rights to use the Complainant’s trademark and is not an authorized agent or licensee of the Complainant’s products, services, or trademarks. There is nothing in the Respondent’s name that indicates it may have become commonly known by the disputed domain name, enabling it to establish a legitimate interest in the disputed domain name, nor any evidence in the present record to indicate that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name.

On the contrary – the Panel finds that the Respondent’s use of the disputed domain name for a website especially turning to the Norwegian market, with information in the Norwegian language, offering the same service as the Complainant and using advertisements for animals copied from the Complainant’s website is an obvious attempt to mislead customers seeking the Complainant’s services and website and to earn click-through revenue. Such use does not establish rights or legitimate interests. See *Fluor Corporation v. Above.com Domain Privacy / Huanglitech, Domain Admin*, WIPO Case No. [D2010-0583](#) (noting that it is “well established” that the use of a domain name to trade off Complainant’s trademark is not *bona fide* and “cannot confer any rights or legitimate interests” upon a respondent); see also *CIMB Group Sdn. Bhd., CIMB-Principal Asset Management Berhad v. PrivacyProtect.org / Cyber Domain Services Pvt.Ltd.*, WIPO Case No. [D2010-1680](#) (registration of a domain name “for the purpose of misleading or diverting consumers” cannot give to rise rights or legitimate interests).

The Panel finds that the Complainant has satisfied the second element of the Policy

## **C. Registered and Used in Bad Faith**

As concluded above, the Complainant’s trademark FINN is well protected and well-known in Norway, a Scandinavian country on the border with Denmark, where the Respondent seems to be located. As the Respondent has also registered a similar domain name under the Norwegian ccTLD “.no”, it is clear to this Panel that the Respondent had the Complainant’s trademark in mind when the Respondent registered the disputed domain name.

The Panel further takes into account the following circumstances:

- The disputed domain name clearly contain the Complainant’s trademark, with the addition of the term “dyr”, related to the services provided by the Complainant;

- The Respondent's site connected to <finndyr.com> offering the same services as the Complainant, using the same for advertisements for animals copied from the Complainant's website;
- The fact that the Respondent has registered another similar domain name including the Complainant's trademark;
- The fact that the Respondent has not filed a formal response to the Complaint and has therefore not provided evidence of any actual or contemplated good faith use by it of the disputed domain name.

Thus, the Panel concludes that the disputed domain name was registered and is being used in bad faith, and that the Complainant has succeeded in proving the three elements within paragraph 4(a) 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, <finndyr.com>, be cancelled.

*/Petter Rindforth/*

**Petter Rindforth**

Sole Panelist

Date: September 8, 2022