

ADMINISTRATIVE PANEL DECISION

FC2, Inc. v. Suzuki Kenzo, Kenzo Suzuki
Case No. D2022-5005

1. The Parties

The Complainant is FC2, Inc., United States of America, represented by Corsearch, Netherlands.

The Respondent is Suzuki Kenzo, Kenzo Suzuki, Philippines.

2. The Domain Name and Registrar

The disputed domain name <fc2-ppv.net> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 28, 2022. On December 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2023, 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 (Whois Privacy Protection Service by onamae.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2023 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 in English on January 7, 2023.

On January 4, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On January 7, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on February 15, 2023. 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is FC2, Inc., one of the most popular video hosting services in Japan. The Complainant was established in the United States in 1999 and offers various free and paid web services in various languages such as Japanese, English and Chinese, including domain names, blogs, chats, rental servers, video hosting and more. The Complainant's webpages receive over 300 million visitors on average per month, and over 25 million users are actively using the Complainant's services.

The Complainant has a substantial portfolio of trademarks, including the terms "FC2" in several countries, such as:

- Japanese Registration for FC2 No 5823261, on January 29, 2016;
- International Registration for FC2 No 1275290, registered on March 16, 2015;
- United States of America Registration for FC2 No. 5046126, registered on September 20, 2016.

The Complainant owns a number of domain name registrations featuring the FC2 trademark, including <fc2.com>, <fc2.net>, <fc2.xxx>, <fc2.me>, <fc2.to>, <fc2.nu> and <fc2.us>.

The disputed domain name was registered on November 11, 2021, and resolves to the Respondent's website. According to the statement on the website, this website is managed by a shopping agent of the Complainant and helps customers who are interested in the contents offered on the Complainant's website but find it difficult to purchase such contents. The Respondent also seems to offer adult content, and charges its customers a fee for purchasing the content from the Complainant's website with an additional 30% shopping agent fee.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its FC2 trademark, since the disputed domain name incorporates the FC2 trademark in its entirety. The descriptive term "ppv" which is generally understood as meaning "pay-per-view", does not dispel confusing similarity between the disputed domain name and the FC2 trademark. And, the generic Top-Level Domain ".net" should be disregarded under the identity test.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized, licensed or otherwise permitted the Respondent to use the FC2 trademark for any other purpose, and has not authorized, licensed or otherwise permitted the Respondent to sell or otherwise offer its products or services. Moreover, the Respondent has not been commonly known by the disputed domain name.

Third, the Complainant asserts that the disputed domain name was registered on November 11, 2021, long after the registration of the Complainant's FC2 trademarks. And, in consideration of the popularity of the Complainant in the online video hosting industry, the Respondent was certainly aware of the Complainant and its trademarks at the time of registration of the disputed domain name. The fact that the disputed domain name resolves to a website where the Respondent claims to be a shopping agent of the Complainant and provides links to unauthorized downloads of the Complainant's copyrighted content from the Complainant's website shows that the disputed domain name is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant requested to that effect;
- the Respondent surely has become aware of this case filed by the Complainant and did not reply to the notification in both English and Japanese by the Center that the Respondent was invited to indicate its objection, if any, to the Complainant's request for the language by the specified due date;
- the disputed domain name is not in Japanese script;
- the website resolving from the disputed domain name is written in English; and,
- the use of Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the FC2 trademark.

The last part of the disputed domain name “.net” represents one of the generic Top-Level Domains, which is irrelevant in the determination of the confusing similarity between the disputed domain name and the FC2 trademark. A hyphen in the disputed domain name is also irrelevant in the same determination.

The word “fc2” is found in the first part of the disputed domain name, which is same as the Complainant’s trademark. Such inclusion is by itself enough to have the disputed domain name to be confusingly similar to the Complainant’s FC2 trademark.

The latter part after the hyphen and before “.net” is “ppv”. The addition of the term “ppv” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s FC2 trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence at all that shows the Respondent is commonly known by the name “fc2-ppv”. The Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant’s FC2 trademark. Use of the disputed domain name, that is, offering its services to purchase adult contents provided by the Complainant for the Respondent’s customers for a fee without any consent of the Complainant constitutes neither a *bona fide* offering service nor a legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complainant’s contentions in this proceeding, the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

Since the Complainant is a large contents provider on the Internet, it is highly unlikely that the Respondent would not have known of the Complainant’s right in the trademark at the time of registration of the disputed domain name. And, the use of the disputed domain name also points to the Respondent’s knowledge of the Complainant and its trademarks. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the fact that the disputed domain name resolves to a website offering the Respondent's services to purchase adult contents provided by the Complainant for the Respondent's customers for a fee without any consent of the Complainant shows that the Respondent's use of the disputed domain name is being done in bad faith.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <fc2-ppv.net> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: February 28, 2023