



DECISION

Fair Isaac Corporation v. Karnchea Barchue / Barchue Enterprises, LLC

Claim Number: FA2303002034670

PARTIES

Complainant is **Fair Isaac Corporation** (“Complainant”), represented by **Ted Koshiol** of **Fair Isaac Corporation**, US. Respondent is **Karnchea Barchue / Barchue Enterprises, LLC** (“Respondent”), US.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<ficopump.com>** (“Disputed Domain Name”), registered with **GoDaddy.com, LLC**.

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

David L. Kreider, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to FORUM electronically on March 6, 2023; FORUM received payment on March 6, 2023.

On March 07, 2023, GoDaddy.com, LLC confirmed by e-mail to FORUM that the **<ficopump.com>** domain name is registered with GoDaddy.com, LLC and that Respondent is the current registrant of the name. GoDaddy.com, LLC has verified that Respondent is bound by the GoDaddy.com, LLC registration

agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On March 8, 2023, FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 28, 2023 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@ficopump.com. Also on March 8, 2023, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on March 27, 2023.

On March 31, 2023, pursuant to Complainant's request to have the dispute decided by a single-member Panel, FORUM appointed David L. Kreider as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

RELIEF SOUGHT

The Complainant requests that the Disputed Domain Name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

The Complainant, Fair Isaac Corporation, registered its FICO Marks, an acronym for the Company name, with the United States Patent and Trademark Office (Reg. No. 2,273,432) on August 31, 1999. The Complainant has continually used its FICO Marks in commerce since at least as early as 1995. It also owns U.S. federal trademark registrations for the following marks: FICO (U.S. Registration Nos. 2,573,131, 2,989,390 and 4,032,019), MYFICO (U.S. Registration No. 2,714,565), and ULTRAFICO (U.S. Registration No. 6,901,439).

The Complainant describes itself as a leading applied analytics company. Its software solutions, including the FICO® Score, operationalize analytics, enabling businesses in nearly 120 countries to make informed credit risk decisions, and execute them at scale. Most leading banks and credit card issuers rely on the Complainant's services, which includes services to consumers that enable people to access and understand their FICO® Scores, the standard measure in the U.S. of consumer credit risk, empowering them to increase financial literacy and manage their financial health. In fiscal year 2022, the Complainant had revenues of \$1.38 billion and employed approximately 3,400 people.

The Disputed Domain Name <ficopump.com>, incorporates the FICO Marks in their entirety, adding only the term "pump" and the top-level domain ".com". The addition of the term "pump" and ".com" top-level domain, the Complainant contends, is insufficient to distinguish the Domain Name from the FICO Marks. See *Exxon Mobil Corporation v. mga enterprises limited*, FA0907001273445 (NAF Aug. 26, 2009) (finding that the addition of the terms "travel" and "club,"

which have an obvious relationship to Complainant's [Exxon's] business, to Complainant's Marks in the disputed domain name <exxontravelclub.com> create a confusing similarity between the disputed domain name and the registered mark).

The Complainant avers that it has no relationship with the Respondent, who registered the Disputed Domain Name on December 29, 2015, nor does the Respondent have any rights in the FICO Marks.

Moreover, the Complainant avers, the Disputed Domain Name resolves to a website containing information related to credit services. The Respondent's use for commercial gain of a domain name that is identical to the FICO Marks to direct Internet users interested in FICO's products and services to a website which offers confusingly similar and/or related goods and services in potential competition with the Complainant, the Complaint alleges, is not a legitimate noncommercial or fair use of the domain name.

The Complainant avers that the Respondent is using the Disputed Domain Name, which is identical to its FICO Marks, to direct Internet users to a commercial website featuring goods and services that compete with or are similar to those offered by FICO and that such use is clear evidence of bad faith registration and use. *See, e.g., Society for the Promotion of Japanese Animation v. In Stealth Mode, citing S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (respondent acted in bad faith by attracting Internet users to website that competes with complainant's business), and *Puckett v. Miller*, D2000-0297 (WIPO June 12, 2000) (respondent diverted business from complainant to competing website in violation of Policy ¶ 4(b)(iii)). Furthermore, the Respondent plainly registered the Disputed Domain Name with the Complainant's FICO Marks in mind in light of the obvious link between the

Complainant's FICO brand services and both the content of the website and the goods and services offered for sale thereon.

B. Respondent

The Response is exceedingly brief. The Respondent asserts: "FICO and FICO Pump are not confusing", and that "not once, in our years of service have we had a single client be confused". FICO, the Complainant, offers credit scores and software. FICO Pump, the Respondent avers, offers non-profit credit consulting. The Response alleges: "We have a cartoon character logo and have the theme of building, *i.e.*, "pumping to impact your score".

The Response uses FICO Pump with reference to:

"Free Impact Consulting Offers Solutions
Free Credit Consulting
Free Source For Building Personal Credit
Free Business Formation
Free Industry News".

FINDINGS

The Complainant, Fair Isaac Corporation, provides business and consumer credit-related products and services worldwide. It enjoys common law trademark rights in and to the FICO Marks since at least as early as 1995, as well as registered rights its FICO Marks since August 31, 1999.

On December 29, 2015, the Respondent registered the Disputed Domain Name <ficopump.com> which resolves to a website offering similar and competing consumer and business credit-related services. The Respondent's use of the Complainant's Marks to redirect users to a competing site does not support a

claim to rights or legitimate interests and does not constitute “fair use” of the Marks.

The Respondent avers that its use of “FICO” is intended to convey the meaning “Free Impact Consulting Offers” and that “Not once, in our years of service have we had a single client be confused”. Whether or not the Respondent’s allegations are worthy of belief, they are mere naked allegations, unsupported by sworn declarations or substantiating documentary evidence.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) 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.

Identical and/or Confusingly Similar

The Disputed Domain Name incorporates the Complainant’s FICO Marks and is identical or confusingly similar to the Marks. The addition of the generic word “pump” and the top-level domain “.com”, the latter being an administrative

requirement only, is insufficient to distinguish the Disputed Domain Name from the Marks.

The first element at Policy Paragraph 4(a)(i) is satisfied.

Rights or Legitimate Interests

It is well established under UDRP jurisprudence that, once the Complainant makes a *prima facie* case in support of its allegations, the burden shifts to the Respondent to show that it does have rights or legitimate interests. *See, e.g., Tejon Ranchcorp and Tejon Ranch Co. v. J & L Enterprises*, FA524749 (Forum September 20, 2005).

The only evidence adduced by the Respondent in support of its claim of fair use, comprises screen shots of the Respondent's website and the Complainant's website.

The Respondent's website purports to offer "free credit repair" services for consumers and ways to "build business credit" and meet FHA loan requirements for commercial users. The Panel accepts the Complainant's contention that such services are confusingly similar and/or related to the Complainant's goods and services and would be likely to compete with those offered by the Complainant. The Respondent's use of the Complainant's Marks to redirect users to a competing website does not support a claim to rights or legitimate interests and does not constitute "fair use" of the Marks.

The second element at Policy Paragraph 4(a)(ii) is satisfied.

Registration and Use in Bad Faith

Because the link between the Complainant's FICO Marks and the services advertised on the Respondent's website is obvious, I am satisfied that the Respondent must have known about the Complainant's mark when it registered the subject domain name. The Panel finds the Respondent's unsupported argument to the contrary, *i.e.*, that "FICO" is intended to convey the meaning "Free Impact Consulting Offers Solutions", unworthy of belief under the circumstances.

The Panel finds that by registering and using the Disputed Domain Name, the Respondent, in bad faith, intentionally sought to attract, for commercial gain, Internet users to its "FICO Pump" website, by creating a likelihood of confusion with the Complainant's registered FICO Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's competing credit consulting services.

The Panel finds that the third element at Policy Paragraph 4(a)(iii) is satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**ficopump.com**> domain name be **TRANSFERRED** from Respondent to Complainant.

David L. Kreider, Panelist

Dated: April 2, 2023