

## **ADMINISTRATIVE PANEL DECISION**

Mav Media, LLC v. tian tao

Case No. D2024-0741

### **1. The Parties**

The Complainant is Mav Media, LLC, United States of America (“United States”), represented by Silverstein Legal, United States.

The Respondent is tian tao, China.

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

The disputed domain name <flingstercom.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 20, 2024, 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 (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 2024, 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 February 22, 2024.

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 February 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on March 27, 2024. 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 operates a website at the <flingster.com> domain name which offers a video chat platform that allows Internet users to video chat with each other. The Complainant, or its predecessor, has owned this domain name since 2002 and the Complainant owns registered trade mark rights for its FLINGSTER mark, including United States trade mark registration number 5,235,295 registered on July 4, 2017 and United States registered trade mark number 6,399,683 registered on June 29, 2021.

The disputed domain name was registered on December 17, 2023 and resolves to a webpage that provides information about the Complainant's website and an affiliate link that diverts Internet users to the Complainant's website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it owns registered trade mark rights in its FLINGSTER mark and that as its mark is wholly incorporated in the disputed domain name, the addition of the suffix "com" before the Top-Level Domain ("TLD") ".com" does not prevent a finding of confusing similarity.

The Complainant notes that the disputed domain name was registered long after the registration of its FLINGSTER mark. It says that its FLINGSTER mark is an arbitrary term that has no meaning outside its use as a means to identify the Complainant as a source of certain products and services. It notes that the Respondent is neither a licensee of the Complainant, nor is the Respondent otherwise authorised to use the Complainant's FLINGSTER mark for any purpose. The Complainant asserts that the Respondent is not commonly known as "Flingstercom" and has not established rights or legitimate interests in the disputed domain name.

The Complainant submits that the disputed domain name currently resolves to a page that provides information about the Complainant's website and that the Respondent has not made preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The Complainant notes that the sole relevant content of the web page at the disputed domain name is information about the Complainant's website and that it contains an affiliate link to the Complainant's website that diverts Internet traffic to the Complainant's website. The Complainant says that the Respondent in this way generates revenue from the Respondent's participation in the Complainant's affiliate program and that it is very probable that an Internet user might be misled into thinking that the webpage is related to, or even operated by, the Complainant. The Complainant submits that such use for the purpose of generating click through revenue is not a bona fide offering of goods or services under the Policy, nor is it a legitimate, noncommercial or fair use, of the disputed domain name.

As far as bad faith is concerned, the Complainant says that the Respondent registered and is using the disputed domain name primarily to profit from and to exploit the Complainant's FLINGSTER trade mark. It says that the Respondent is using the disputed domain name to misdirect Internet users to its own website which contains information about the Complainant's website and an affiliate link to the Complainant's website. The Complainant submits that the Respondent's use of the disputed domain name in connection with a revenue-generating scheme under which the Respondent receives some compensation from

revenues generated by clicks activated through the disputed domain name constitutes bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy.

Further, the Complainant submits that the designation FLINGSTER is unique and arbitrary such that it is unlikely that the Respondent devised the term “Flingstercom” on its own and rather that it knowingly registered the disputed domain name containing an exact reproduction of the well-known FLINGSTER mark in order to capitalise on consumer recognition of the mark and its association with the categories of goods/services listed on the website at the domain name <flingster.com>. The Complainant notes that this is in breach of the Fox Revenue Affiliate Program Terms under which the Complainant asserts that the Respondent receives click through revenue. The fact that the Respondent hid its identity from the public behind a Whois privacy wall in order to shield its identity from the Complainant only reinforces its bad faith, according to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of a further “com” suffix before the TLD “.com” does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant has asserted that the disputed domain name was registered long after the registration of its FLINGSTER mark. It has submitted that its FLINGSTER mark is an arbitrary term that has no meaning outside its use as a means to identify the Complainant as a source of certain products and services. It has also confirmed that the Respondent is neither a licensee of the Complainant, nor is it otherwise authorised to use the Complainant's FLINGSTER mark for any purpose. The Complainant has asserted that the Respondent is not commonly known as "Flingstercom" and has not established rights or legitimate interests in the disputed domain name.

The Complainant has also submitted that the disputed domain name currently resolves to a page that provides information about the Complainant's website and that the Respondent has not made preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The Complainant has submitted that the only content of the web page at the disputed domain name is information about the Complainant's website and that it contains an affiliate link to the Complainant's website that diverts the Internet traffic to the Complainant's website. The Complainant has said that the Respondent has in this way generated revenue from the Respondent's participation in the Complainant's affiliate program and that it is very probable that an Internet user could be misled into thinking that the web page is related to or even operated by the Complainant. The Complainant has submitted that such use for the purpose of generating click through revenue is not a bona fide offering of goods or services under the Policy, nor is it a legitimate, noncommercial, or fair use, of the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the composition of the disputed domain name, incorporating the Complainant's trade mark in its entirety with an additional term "com" referring to a widely used TLD, may mislead Internet users into believing that the disputed domain name is associated with or operated by the Complainant, particularly considering the website's content is related to the Complainant with no information that the website itself has no relationship with the Complainant.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name was registered in 2023 well after the initial use and registration of the Complainant's FLINGSTER trade mark. This mark is a distinctive term that is not in common use in the English language and appears to be a coined term. Considering that the Complainant had a pre-existing web presence for its FLINGSTER web chat business at the domain name <flingster.com> and that the Respondent only registered in 2023 the disputed domain name, containing the additional term "com" before the TLD ".com", it seems to the Panel more likely than not that the Respondent knew of the Complainant's mark when it registered the disputed domain name and did so in order to confuse Internet users for its own commercial purposes as discussed below.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case it appears that the Respondent is using the disputed domain name to confuse and redirect Internet users through its own website and to ultimately re-direct them through to the Complainant's site. The reason for doing this appears to be to earn click through revenue from the Fox Revenue affiliate program by driving traffic to the Complainant's "www.flingster.com" website and the Panel notes that the Respondent has not attempted to deny that this is the case. This conduct fulfills the requirements of paragraph 4(b)(iv) of the Policy which is evidence of registration and use of the disputed domain name in bad faith and the Respondent's use.

Even if the Respondent does not receive click through revenue from re-directing to the Complainant's site, panels have found that "a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant". [WIPO Overview 3.0](#), section 3.1.4.

In the circumstances, the Respondent's use of a privacy service and provision of false or incomplete address when registering the disputed domain name (the Written Notice was not able to be delivered by courier service) to mask and hide its identity only serves to reinforce the Panel's view of the Respondent's bad faith.

The Panel finds that the 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 <flingstercom.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: April 10, 2024