

ADMINISTRATIVE PANEL DECISION

Flexspace No 2 LLP v. Cem Arslan
Case No. DNU2022-0001

1. The Parties

The Complainant is Flexspace No 2 LLP, United Kingdom (“UK”), represented by Freeths LLP, United Kingdom.

The Respondent is Cem Arslan, Denmark.

2. The Domain Name and Registrar

The disputed domain name <flexspace.nu> (the “Domain Name”) is registered with team.blue (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the Domain Name. The Center sent an email communication in English and Danish to the Parties the same day regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the Domain Name is Danish.

The Center verified that 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 in English and Danish, and the proceedings commenced on April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on May 23, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Flexspace No 2 LLP, is a limited liability partnership registered under the laws of England. The Complainant is a provider of flexible offices, workshops, industrial and self-storage spaces throughout the UK. The Complainant owns various UK and European trademark registrations that incorporate the textual element FLEXSPACE, such as European Union Trademark registration number 015865521 for figurative trademark with the textual element FLEXSPACE, registered on December 22, 2017, and UK trademark registration UK00003242304 for FLEXSPACE, registered on February 2, 2018

The Domain Name was registered on August 21, 2021. At the time of the Complaint, and at the time of drafting the Decision, the Domain Name resolved to an active web page in Danish offering flexible office solutions in Copenhagen, Denmark, and the surrounding area.

5. Parties' Contentions

A. Complainant

The Complainant requests that the language of the proceedings be English, because;

- there is an English version of the website hosted at the Domain Name and as such the Domain Name and the website appear to be targeting an English speaking audience;
- by reason of the English language version of the website, it is apparent that the Respondent is familiar with the English language; and
- the Complainant is incorporated and based in the United Kingdom.

The Domain Name is identical to the Complainant's trademark FLEXSPACE. On this basis, the Complainant submits that the mere appearance of the Respondent's name on the publicly accessible records relating to the Domain Name amounts to a misrepresentation that is likely to deceive the public into believing that the Complainant or a connected company operates the Domain Name.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark, and has no rights or legitimate interest in the Domain Name. The Complainant refers to the Respondent's webpage and claims that there is "prominent use of the FLEXSPACE trademark", and "in consequence, most individuals navigating to the Domain will be expecting to reach a website operated by, or at the least associated with, the Complainant".

The Complainant argues that the Domain Name is registered in bad faith as the Complainant's trademark rights predate the Respondent's registration of the Domain Name. Moreover, the Domain Name is used in bad faith as it is "in direct contravention of the Complainant's trade mark rights". The Complainant argues that "these prior rights to the FLEXSPACE trade marks (and similar signs and marks) and in view of the presence of the FLEXSPACE trade mark in the Domain, the Domain therefore takes unfair advantage of the Complainant's rights". The Complainant submits that the Domain Name has been intentionally used to attract Internet users, for commercial gain, to the Respondent's website by creating a connection with the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

A. Language of the Proceeding

Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement, unless otherwise agreed by the parties. Importantly, paragraph 11(a) also states that the determination of the language of the proceeding is “[...] subject to the authority of the Panel [...], having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement is Danish. The Complainant submitted its Complaint in English, and requested English to be the language of the proceeding.

The Panel notes that the Center has sent the notifications to the Respondent in both English and Danish, providing the Respondent a fair chance to object. Even if the Panel does not agree that the Respondent’s webpage is “targeting an English speaking audience”, the Panel notes that there is a translate-to-English-option on the Respondent’s Danish language website, which the Domain Name resolves to. It indicates that the Respondent can understand English, as most Danes. The Panel therefore determines that the language of this proceeding to be English, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.

Turning to the merits of the case, in order to prevail, the Complainant must prove each of the three elements in paragraph 4(a) of the Policy.

B. Identical or Confusingly Similar

The Complainant documents trademarks rights, such as the figurative European Union Trademark with registration number 015865521, FLEXSPACE, registered December 22, 2017.

The test for confusing similarity involves the comparison between the textual element of the trademark and the Domain Name. In this case, the Domain Name and the textual element of the trademark are identical. For the purpose of assessing confusing similarity, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”), see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is identical to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register the Domain Name containing the Complainant’s trademark or otherwise make use of the Complainant’s mark. As to the Respondent’s use of the Domain Name, the Complainant argues there is “prominent use of the FLEXSPACE trademark”, and “in consequence, most individuals navigating to the Domain will be expecting to reach a website operated by, or at the least associated with, the Complainant”.

The Panel has examined the Respondent’s webpage. The Respondent’s webpage appears to be offering customers flexible office solutions in Copenhagen, Denmark, and the surrounding area. On the webpage, the Respondent is using the text “flexspace”, but does not seem to use any graphical elements of the Complainant’s trademark. In fact, the Panel cannot find any reference at all to the Complainant on the Respondent’s webpage. The Complainant’s statement that there is prominent use of the Complainant’s trademark comes across as miscued. From looking at the Respondent’s webpage, it is clear that the company Flexspace.nu is responsible for what probably is a genuine service. As part of the general powers of the Panel, as articulated, *inter alia*, in paragraph 10 of the Rules, the Panel has carried out a general search on the Internet including the Respondent’s name and the Domain Name. According to the publicly available information, Flexspace.nu was registered on December 12, 2021, with the Danish Business Register and with the Respondent as contact person. It seems the business may have ceased on March 24, 2022, and while the life of such business was short, the Panel finds that the cease of Respondent’s operations in connection with such business is not particularly conclusive for the purposes of this dispute.

Noting that the Complainant must prevail on all three elements to succeed, and that the third element is not met, the Panel finds it is unnecessary to conclude under the second element of the Policy.

D. Registered and Used in Bad Faith

The Panel notes that the burden of proof is on the Complainant. The Respondent's default by itself does not mean that the Complainant is deemed to have prevailed, see WIPO Overview, section 4.3. As much as the Panel is prepared to draw inferences where a particular conclusion is obvious or no other plausible conclusion is apparent, the Panel have found that the Complainant has not proven bad faith.

The Complaint argues that the Domain Name has been registered in bad faith as the Complainant's trademark rights predate the Respondent's registration of the Domain Name. Even if prior trademark rights often is an indicator of bad faith, it is of course not sufficient by itself to find bad faith.

Moreover, the Panel does not find that there is enough evidence to conclude that the Respondent probably knew or should have known of the Complainant and its trademark when the Respondent registered the Domain Name. The Domain Name results of the combination of two terms "flex" and "space" (a combination of terms that are naturally used in the context of flexible office and business space), and the Panel finds that there is not sufficient evidence to consider Complainant's trademark to be widely known. In addition, in the circumstances of this case, the Respondent does not appear to be a domainer who bulk purchase domain names or someone that may fall under the concept of willful blindness, where prior UDRP panels has expected to undertake good faith efforts to screen such registrations against readily-available online databases to avoid the registration of trademark-abusive domain names. Even if the Respondent in this case had made a search for "flexspace" on an Internet search engine, he would be none wiser as it leads to millions of results, including among them different companies using the term and the concept of "Flex space". In short, the Panel believes it is more likely than not that the Respondent was unaware of the Complainant's trademark when the Respondent registered the Domain Name, and probably registered it due to its significance as two dictionary terms combined.

The Complainant claims that Domain Name is used in bad faith because it is in contravention of the Complainant's prior trademark rights and the Domain Name has been intentionally used to attract Internet users, for commercial gain, to the Respondent's website by creating an unauthorized connection with the Complainant's trademark.

Based on the submitted documents, including the descriptive nature of the Domain Name, the Panel is not convinced that the Domain Name has been registered in bad faith to target the Complainant's trademark. The terms "flex space" are short for the words "flexible space" and is widely used for services such as flexible office/meeting solutions. Also in countries where English is not the first language. Moreover, the Respondent appears to had run a genuine website offering such services (connected to the common concept of "flex space", and not seeking to benefit unfairly from confusion with the Complainant's trademark), which colors the reason why the Respondent may have chosen such terms for the Domain Name. The Panel cannot find any reference to the Complainant on the Respondent's webpage. Therefore, based on the evidence in this case, the Panel cannot on the balance of probabilities conclude that the Respondent has had the Complainant in mind when he registered and used the Domain Name for its webpage.

Paragraph 4(a)(iii) of the Policy has not been met.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: June 6, 2022