

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-3888

1. The Parties

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The domain name <flingstwr.com> (the “disputed domain name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2022. On October 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Domains By Proxy, LLC, USA) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 October 20, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2022.

The Center appointed Cherise Valles as the sole panelist in this matter on November 16, 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, by way of assignment, has a registration in International Classes 38 and 45 for the FLINGSTER word mark (“trademark”) in the United States. The Complainant’s trademark registration is provided in Annex C of the Complaint under United States Patent and Trademark Office (“USPTO”) Registration No. 5,235,295, registered on July 4, 2017.

The Complainant states that it provides “an adult video chat platform that allows users to chat with each other on the World Wide Web by video”. The Complainant states that it has extensively used the FLINGSTER trademark in providing its services.

The Complainant indicates that it has used the FLINGSTER trademark in connection with its services as early as July 13, 2016, and the Complainant and its predecessor-in-interest have used the trademark since at least June 1, 2014. The Complainant promotes its services at the website associated with the domain name <flingster.com>.

The disputed domain name <flingstwr.com> was registered by the Respondent on May 15, 2019. The Registrar with which the disputed domain name is registered is GoDaddy.com, LLC.

The Complainant states that the disputed domain name currently resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant, in an apparent scheme for the Respondent to derive commissions from “affiliate marketing” programs (Annex D of the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain name is confusingly similar to the Complainant’s registered FLINGSTER trademark, in light of the fact that, according to the Complainant, “the Disputed Domain Name is a typosquatted version of the Mark where Respondent substituted the letter ‘e’ from FLINGSTER with the letter ‘w’.” The Complainant adds that “the letter ‘w’ is adjacent to the letter ‘e’ on a normal qwerty keyboard, making a typo more likely.”

The Respondent lacks rights or legitimate interests in the disputed domain name.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain name. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name that included its trademarks.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith.

- The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use. Furthermore, the Respondent's impersonating and/or competing uses of the disputed domain name is clear evidence of bad faith.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for a Complaint to succeed, the Complainant must prove each of the following elements:

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

The Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

A. Identical or Confusingly Similar

To prove this element, the Complainant must have relevant rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name replaces the "e" in the Complainant's trademark with a "w" and thus virtually incorporates the FLINGSTER trademark in its entirety. Given the Complainant's trademark registration as detailed above, the Panel finds that the Complainant has established its trademark rights for the purposes of paragraph 4(a)(i) of the Policy.

The Complainant asserts that the disputed domain name is confusing similar to such mark. As noted above, the Complainant has argued that the disputed domain name is a typosquatted version of its trademark. The disputed domain name is based on the Complainant's trademark but replaces the letter "e" with a "w". As stated in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". Thus, the replacement of the letter "e" with a "w" in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's FLINGSTER trademark.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top-Level Domain ("TLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable [TLD] in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test". In the present case, the TLD ".com" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (see, for example, *LinkedIn Corporation v. Privacy service provided by Withheld for Privacy ehf / Scrap LinkedIn*, WIPO Case No. [D2021-0019](#); *Bayerische Motoren Werke AG v. Domain Privacy Ltd/ DNS Admin*, WIPO Case No. [D2021-0012](#); and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, it appears that the Complainant has established the requisite *prima facie* case.

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's FLINGSTER trademark in any manner, including in, or as part of, the disputed domain name.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy because the disputed domain name currently resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant, in an apparent scheme for the Respondent to derive commissions from “affiliate marking” programs.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant’s trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name.

In light of the foregoing, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain name was registered and that it is being used in bad faith. The term “bad faith” is “broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. See section 3.1 of the [WIPO Overview 3.0](#). Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on its website or location.

In the present case, the Complainant’s submissions relate to paragraph 4(b)(iv) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

1) Registration in bad faith

Given the well-known nature of the Complainant's FLINGSTER trademark, it is implausible that the Respondent was unaware of the FLINGSTER trademark when it registered the disputed domain name.

Bad faith can be found where a respondent "knew or should have known" of a complainant's trademark rights but nevertheless registered a particular domain name in which it had no rights or legitimate interests (see *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#); *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

The composition of the disputed domain name is virtually identical to the Complainant's trademark and domain name <flingster.com>. The fact that the disputed domain name incorporates the Complainant's trademark FLINGSTER with the typographical error of replacing the "e" with a "w" indicates that the Respondent registered the disputed domain name in order to divert Internet traffic to its website. Prior UDRP panels have held that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademarks suggests opportunistic bad faith (see *LEGO Juris A/S v. store24hour*, WIPO Case No. [D2013-0091](#)). Given the reputation and distinctiveness of the Complainant's trademark, registration in bad faith can be inferred in the present case.

As noted above, the Complainant's trademark rights predate the registration date of the disputed domain name. Knowledge of a corresponding trademark at the time of the registration of the domain name suggests bad faith (see *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#)).

2) Use in bad faith

As previously noted, the Respondent has used the disputed domain name to direct Internet users to a rotating set of third-party websites unaffiliated with the Complainant, in an apparent scheme for the Respondent to derive commissions from "affiliate marketing" programs. Previous UDRP panels have held that the use of a domain name to divert Internet users to a webpage for commercial gain is evidence of bad faith (see *F Hoffmann-La Roche AG v. Anna Valdier*, WIPO Case No. [D2007-0956](#)).

The Respondent has not participated in the administrative proceeding and has not answered the Complainant's contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good-faith motivation in respect of the registration or use of the disputed domain name in the face of the Complainant's contentions can be regarded as an indicator of bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain name under paragraph 4(a)(iii) 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 <flingstwr.com> be transferred to the Complainant.

/Cherise Valles/

Cherise Valles

Sole Panelist

Date: November 30, 2022