

ADMINISTRATIVE PANEL DECISION

Flappy Bird Holding Ltd. v. Phu Cuong Ha
Case No. D2025-0617

1. The Parties

The Complainant is Flappy Bird Holding Ltd., Cyprus, represented by Kushnirsky Gerber PLLC, United States of America ("United States").

The Respondent is Phu Cuong Ha, India.

2. The Domain Name and Registrar

The disputed domain name <flappygame.org> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 17, 2025. On February 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 17, 2025, 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 (Private Registrant c/o NameCheap, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 18, 2025, 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 18, 2025.

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 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 14, 2025.

The Center appointed Adam Taylor as the sole panelist in this matter on March 20, 2025. 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 has operated a mobile game under the mark FLAPPY BIRD since 2014.

The Complainant owns United States trade mark No. 5430683 for FLAPPY BIRD, registered on March 27, 2018, in class 9.

The Complainant operates a website at “www.flappybird.org”.

On January 23, 2025, the Complainant filed a separate, ultimately successful, UDRP case against the Respondent arising from the Respondent’s use of another domain name, <flappy-bird.co>, for a website similar to that outlined below in relation to the disputed domain name. The Complaint in that case was served on the Respondent on January 30, 2025. See *Flappy Bird Holding Ltd. v. Phu Cuong Ha*, WIPO Case No. [DCO2025-0005](#) (“the Previous Case”). The next day, January 31, 2025, the Respondent registered the disputed domain name, set up a website at the disputed domain name (see below) and redirected <flappy-bird.co> thereto.

When viewed by the Panel, the disputed domain name resolved to a website entitled “Flappy Game” including a banner with a purported link to play “Flappy Bird” plus an image of the Complainant’s bird character as well as purported information about the Complainant’s game and buttons linking to other games.

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 the Respondent is hosting an unauthorised and counterfeit version of the Complainant’s game.

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 trademark 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.

A dominant feature of the mark, namely the word “flappy”, is recognizable 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.

Furthermore, as discussed below under the third element, the content of the Respondent’s website supports a finding of confusing similarity as it indicates that the Respondent registered the disputed domain name precisely because it believed that the disputed domain name was confusingly similar to the Complainant’s mark. [WIPO Overview 3.0](#), sections 1.7 and 1.15.

Although the addition of other terms (here, “game”) may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 recognised 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.

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.

As to paragraph 4(c)(i) of the Policy, and as further discussed in section 6C below, the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant’s goods and/or services. Such use of the disputed domain name could not be said to be bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name contain a dominant element of the Complainant's mark, namely the term "flappy" plus the highly relevant descriptive term "game", but the Respondent has used the disputed domain name for a website that creates the impression that it is officially associated with the Complainant including by prominent use of the Complainant's bird character and a purported link to play the Complainant's game.

It is reasonable to infer that, in offering an unauthorised and counterfeit version of the Complainant's game (as the Complainant contends and the Respondent has not appeared in this proceeding to contest) and, in any event, displaying links to competing games, the Respondent was intent on commercial gain.

The Panel also notes that the Respondent has engaged in a pattern of such conduct vis-à-vis the Complainant. In the Previous Case, the Respondent's registration and use of another domain name reflecting the Complainant's mark for a similar website to that of the disputed domain name was found to constitute bad faith. Indeed, the Respondent registered the disputed domain name shortly after being served with the Complaint in the Previous Case in what was plainly a defensive move designed to enable the Respondent to carry on its illegitimate activities.

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 <flappygame.org> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 3, 2025