

## ADMINISTRATIVE PANEL DECISION

FlexLink AB v. 上海上乾自动化设备有限公司 (Shang Hai Shang Qian Shi Ye You Xian Gong Si)

Case No. DCC2024-0036

### 1. The Parties

Complainant is FlexLink AB, Sweden, represented by Zacco Sweden AB, Sweden.

Respondent is 上海上乾自动化设备有限公司 (Shang Hai Shang Qian Shi Ye You Xian Gong Si), China.

### 2. The Domain Name and Registrar

The disputed domain name <flexlink.cc> (the “Domain Name”) is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 10, 2024. On December 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 11, 2024, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (N/A) and contact information in the Complaint. The Center sent an email communication to Complainant on December 11, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on December 11, 2024.

On December 11, 2024, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. On December 11, 2024, Complainant requested English to be the language of the proceedings. Respondent did not submit any comment on Complainant’s submission.

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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on December 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 8, 2025.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on January 13, 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**

Complainant, a Swedish company founded in 1980, is owned by Coesia Group, a group of companies in the industrial and packaging field, headquartered in Italy. Complainant manufactures automated production and material flow solutions that provides its customer base with automated conveyor systems, and conveyor equipment. Complainant's products and solutions are sold in over 60 countries, with sales amounting to SEK 3,660 million in 2023. It currently has approximately 1,200 employees across four continents.

Complainant owns several registered trademarks over several jurisdictions for the FLEXLINK mark, including:

- International Trademark Registration number 758763 for the FLEXLINK word mark, registered on April 9, 2001, designating among other countries, China and the United States of America;
- European Union registered trademark number 001941137 for the FLEXLINK word mark, registered on December 20, 2002; and
- European Union registered trademark number 009571316 for the FLEXLINK word mark, registered on May 16, 2011.

Complainant also owns and operates websites at the domain names <flexlink.com>, registered in 1997 which is its official website, and <flexlink.cn>, registered in 2003.

The Domain Name was registered on June 6, 2017 and resolved to a website of Shanghai Shangqian Automation Equipment Co., Ltd (上海上乾自动化设备有限公司) that displayed Complainant's trademark promoted and offered for sale products that are in direct competition to Complainant's business and products.

On November 28, 2024, Complainant sent a cease and desist letter to Respondent, requesting Respondent to terminate use of the Domain Name on the Internet; transfer the Domain Name to Complainant, and refrain from further use of Complainant's rights without explicit approval. The letter also included a UDPR notice. Despite a reminder, Respondent did not respond to the cease and desist letter.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for FLEXLINK, and that Respondent

registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known FLEXLINK products and services.

Complainant notes that it has no affiliation with Respondent, and that Respondent is its direct competitor. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceedings**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceedings shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceedings.

Complainant submitted its original Complaint in English. In its email dated December 11, 2024, Complainant submitted its request that the language of the proceedings should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese. Respondent did not submit any comment on Complainant's submission.

Complainant submits that the Domain Name consists of its trademark in the English language and in Latin characters; the owner of the Domain Name created and was hosting a website where Complainant's trademark is used, and where portions of the website had content available in English.

Complainant submits that Respondent is also a direct competitor of Complainant, and is using the Domain Name to host a website where competing products are sold, has actively targeted Complainant's business and trademark; and it would be cumbersome, costly, and result in delay, if Complainant is required to translate the complaint into Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceedings. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name contains Complainant's FLEXLINK trademark in its entirety, the Domain Name directed to a website that featured Complainant's FLEXLINK trademark and provided content that was partially in English. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceedings as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceedings, nor did Respondent choose to file a Response in Chinese or English.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceedings.

## 6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the FLEXLINK trademarks, as noted above under section 4. Complainant has therefore proven that it has the requisite rights in the FLEXLINK trademarks.

With Complainant's rights in the FLEXLINK trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".cc"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's FLEXLINK trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its FLEXLINK trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent is not authorized to promote Complainant's services and is not related to Complainant. Respondent is also not known to be associated with the FLEXLINK trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the

Domain Name resolved to a website that was in direct competition with Complainant's field of business and industry. The website which the Domain Name resolved to, featured the FLEXLINK trademark, a copyright notice "FLEXLINK [...]" as well as products in Complainant's field of business, potentially misleading Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant.

Thus, such use by Respondent does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Moreover, the nature of the Domain Name, identical to Complainant's trademark FLEXLINK, is inherently misleading and carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the FLEXLINK trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's FLEXLINK trademarks and related products and services are widely known and recognized. Therefore, the Panel is of the view of that Respondent was aware of the FLEXLINK trademarks when it registered the Domain Name. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs*

*Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name identical to Complainant's FLEXLINK trademark suggests Respondent's actual knowledge of Complainant's rights in the FLEXLINK trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for bona fide and well-known FLEXLINK products and services of Complainant or authorized partners of Complainant.

In particular, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name resolved to a website featuring Complainant's FLEXLINK mark, a copyright notice "FLEXLINK [...]" as well as products in Complainant's field of business and industry, to promote Respondent's activities. The use of the FLEXLINK mark in the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Name, and then further to promote products that are in direct competition with Complainant, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's FLEXLINK mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. All these actions may result in tarnishing Complainant's reputation and goodwill in the industry.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <flexlink.cc> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: January 23, 2025