Decision for dispute CAC-UDRP-102467

Case number	CAC-UDRP-102467
Time of filing	2019-05-02 10:00:05
Domain names	flowbrid.group

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	FLOWBIRD SAS (PARKEON)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	clover rush llc

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the French trademark FLOWBIRD n°4425718 registered on February 5, 2018; the French trademark FLOWBIRD n° 4449643 registered on April 27, 2018 and the international trademark FLOWBIRD n° 1454019 registered on July 13, 2018.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Under the name FLOWBIRD, the Complainant is in the business of supporting decision-makers in organising, encouraging and managing mobility within cities, helping address quality of life, environmental and economic challenges, improving the environment by reducing air pollution, optimising traffic, simplifying payments and in doing so, making cities more secure and economically sustainable.

The Complainant registered the domain name <flowbird.group> on February 27, 2018.

The Respondent registered the disputed domain name <flowbrid.group>, using a privacy service, on October 10, 2018. It

does not resolve to an active website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, to obtain transfer of the disputed domain name, the Complainant must prove the following three elements: (i) the Respondent's 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 the disputed domain name; and (iii) the Respondent has registered the disputed domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

As to the first element, the Panel accepts the Complainant's contention that the inversion of the letters "R" and "I" and the addition of the new gTLD extension ".GROUP" are not sufficient to escape a finding that the domain name <flowbrid.group> is confusingly similar to the Complainant's FLOWBIRD trademarks.

As to legitimacy, the Complainant asserts that the Respondent's lack of legitimate interests in respect of the disputed domain name are demonstrated by the following: the Respondent is not commonly known by the disputed domain name since the Respondent was not identified in the WHOIS database as the registrant; the Respondent is neither affiliated with nor authorized by the Complainant in any way; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither licence nor authorization has been granted by the Complainant to the Respondent to use the trademark FLOWBIRD nor to apply for registration of the disputed domain name, being a typosquatted version of that trademark which is inactive and has not been used since registration.

The Complainant's assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As to bad faith, the Complainant says the disputed domain name is confusingly similar to the Complainant's trademark FLOWBIRD which has no meaning in any language. Most Google search results on the expression "FLOWBIRD" are related to the Complainant. By choosing to register the disputed domain name with the new gTLD ".GROUP", the Respondent likely wanted to create confusion or a sense of association with the Complainant and its website "www.flowbird.group". Thus, the Respondent likely targeted the Complainant and its FLOWBIRD trademark when registering the disputed domain name. Further, the misspelling in the disputed domain name of the FLOWBIRD trademark was intentionally designed to be confusingly similar to that trademark and to the Complainant's domain name <flowbird.group>. Previous UDRP panels have seen such actions as evidence of bad faith. See FORUM Case No. FA 877979, Microsoft Corp. v. Domain Registration Philippines ("Respondent's misspelling of Complainant's MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy paragraph 4(a)(iii)."). Further, the Respondent has not demonstrated any activity related to the disputed domain name and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as passing off, infringement of consumer protection legislation or infringement of the Complainant's trademark rights.

The Panel finds this to be a clear case of "typosquatting" because the disputed domain name comprises an obvious misspelling of the Complainant's trademark FLOWBIRD. The combination of the word "FLOWBRID" with the ".GROUP" gTLD leads the Panel to conclude that the Respondent clearly had the Complainant, its FLOWBIRD trademark and its <flowbird.group> domain name in mind when registering the disputed domain name.

The Panel can conceive of no bona fide basis on which the Respondent could have registered the disputed domain name and notes that the Respondent has not seen fit to provide any explanation. The Panel concludes that the Respondent must have known that any use of the disputed domain name would falsely misrepresent a connection with the Complainant. The fact that the Respondent has not used the disputed domain name does not preclude a finding of bad faith use, since this element does not require positive action, inaction being within the concept: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Accordingly, in the circumstances of this case, the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FLOWBRID.GROUP**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2019-06-08

Publish the Decision