Decision for dispute CAC-UDRP-103184

Case number	CAC-UDRP-103184
Time of filing	2020-07-22 09:07:23
Domain names	frontlineplus.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Merial

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Domain Administrator

OTHER LEGAL PROCEEDINGS

There are no other proceedings the Panel is aware of.

IDENTIFICATION OF RIGHTS

The Complainant owns a very substantial portfolio of registered marks which are, or include, the word element "FRONTLINE." These include, a French national mark FRONTLINE, no. 93496789 registered on 15 December 1993 and a European mark FRONTLINE PET CARE no. 2932853 registered on 19 January 2016 as well as an International mark FRONTLINE no. 1245236 registered on 30 January 2015 in various countries.

There is no question that the Complainant has rights and furthermore, it is a well-known mark or a mark with a reputation.

In common law countries it also has common law marks or unregistered rights protected by common law.

Furthermore, the Complainant owns multiple domain names including <frontline.com> registered on 28 January 1999.

FACTUAL BACKGROUND

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

The Complainant is a world leader in animal health, offering a full range of veterinary drugs and vaccines for a large number

of animal species. It employs 6,900 people in over 150 countries. Its turnover in 2015 was some 2.5 billion euros. It was acquired by the German group Boerhinger Ingelheim in 2017.

Its leading product is Frontline Plus, an anti-parasite treatment for pets.

The disputed domain name <frontlineplus.com> was registered on 19 June 2002 and redirects to a parking page with commercial links that reference the Complainant's name and reputation. The disputed domain name was also shown as available for sale.

The Panel viewed the disputed domain name on 2 September 2020 and the links listed were:

-Frontline Plus for Dogs
-Frontline Plus for Flea and Tick
-Frontline Cat Flea
-Flea Control for Dogs
etc etc

PARTIES CONTENTIONS

Similarity
The Complainant says that the disputed domain name is confusingly similar to its senior registered mark FRONTLINE and identical to its junior mark FRONTLINE PLUS. Further, the disputed domain name includes this second mark in its entirety. The Complainant asserts that the addition of the generic Top-Level Domain suffix ".com" is irrelevant to the similarity analysis and does not change the overall impression of the designation as being connected to the Complainant. It does not prevent the likelihood of confusion and association between the disputed domain name and the Complainant and its name and marks. See WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar."). The Complainant was found to have rights in the marks in The Forum Case no. FA1203001433797, Merial v. The Nollinger Group, Inc. (re: <frontlinekit.com>).

Rights or Interests
According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name, see The Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policyparagraph4(c)(ii)."). The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks or apply for registration of the disputed domain name by the Complainant.

Further, the disputed domain name points to a parking page with commercial links ("PPC") which reference the Complainant and its goods. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use, see The Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend ("concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees"). WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark

for the purpose of offering sponsored links does not of itself qualify as a bona fide use."). Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

Bad Faith
The Complainant finds that it is likely that the Respondent registered the disputed domain name with the intention to profit from, and free-ride on, the Complainant's goodwill and reputation. This is because the Respondent registered the disputed domain name to direct Internet users to a PPC website that displays sponsored links for financial services and has a link "buy this domain." Clicking on the "buy this domain" link redirects Internet users to a domain name broker website. See, for example, Citigroup Inc. v. Kevin Goodman, The Forum Case FA1623939 (11 July 2015) ("finding that a respondent registered a disputed domain name primarily for the purpose of transferring it for profit, thus demonstrating that respondent's bad faith registration and use of the domain name").

Based on these facts, the Complainant contends that the disputed domain name is being offered for sale through a domain name marketplace, presumably for an amount in excess of Respondent's out-of-pocket costs and is being used to display pay-per-click links related with the Complainant. Such conduct is indicative of bad faith registration and use under the provisions cited above. See, e.g., Toronto-Dominion Bank v. Amanosi Dick / Tdsavings, The Forum Case no. FA 1889816 (23 April 2020) ("finding bad faith based on use of privacy service to register domain name combining Complainant's TD BANK mark with generic term related to Complainant's business"); MTD Products Inc v. Milen Radumilo, The Forum Case no. FA 1861380 (5 October 2019) ("finding bad faith based on use of privacy service to register domain name with obvious association with trademark, general offer to sell domain name, and use of domain name to redirect Internet users to third-party websites"). On these grounds, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Past panels have found PPC advertising is not a bona fide offering of goods or services or legitimate non-commercial or fair use, see The Forum Case no. FA 970871, Vance Int'l, Inc. v. Abend ("concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees"). See also WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

RESPONDENT:

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

This is a straightforward case. There is no question about the Complainant's rights. These are well-known marks and have been for many decades.

The mark, Frontline Plus, is reproduced in its entirety and can only reference the Complainant's most famous product.

There is no question that the Respondent knew of these marks when it selected the disputed domain name and it has not come forward with any other explanation for the selection.

No legitimate use is evident on the face of the matter and there are no resales of the genuine product itself or other reason or right in play based on current use.

Parking that clearly leverages the reputation and goodwill of the Complainant is objectionable and here, the Respondent is blatently earning advertising revenue on/at the disputed domain name. This is a flagrant harvest from the confusion it generates with the public.

This is made worse by the fact it is a .com. The public will assume that the domain must belong to the Complainant.

We do not need to look at the open offer of sale but it would be safe to infer the price would exceed costs.

This registration and use is in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRONTLINEPLUS.COM**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2020-09-02

Publish the Decision