Decision for dispute CAC-UDRP-103244

Case number	CAC-UDRP-103244
Time of filing	2020-08-19 11:06:44
Domain names	cheapestfrontlineplus.com

Case administrator

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

Complainant

Organization	MERIAL

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	GNAME.COM PTE. LTD

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns numerous trademarks incorporating the term “FRONTLINE”, including:

- French trademark FRONTLINE® n° 93496789 registered since December 15, 1993;
- International trademark FRONTLINE® n° 1245236 registered since January 30, 2015;
- Australian trademark FRONTLINE PLUS® n° 909161 registered since April 11, 2002;
- European trademark FRONTLINE PET CARE® n° 2932853 registered since January 19, 2016.

The Complainant also owns the domain name <frontline.com> registered and used since January 28, 1999.

FACTUAL BACKGROUND

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

The disputed domain name <cheapestfrontlineplus.com> was registered on August 12, 2020 and redirects to a content unrelated to the domain name. (Annex 5).

Therefore, the Complainant argues that Respondent fails to use the disputed domain name in connection with a bona fide offering of goods or services or for a legitimate noncommercial or fair use. See Ripple Labs Inc. v. NGYEN NGOC PHUONG THAO, FA 1741737 (Forum August 21, 2017) ("Respondent uses the [disputed] domain name to divert Internet users to Respondent's website… confusing them into believing that some sort of affiliation exists between it and Complainant… [which] is neither a bona fide offering of goods or services under Policy 4(c)(i) nor a legitimate noncommercial or fair use under Policy 4(c)(iii)."); see also Haru Holding Corporation v. AI Matusita, FA 1679867 (Forum Aug. 11, 2016) (holding that "unrelated use [of a disputed domain name] by a respondent consists of neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use").

The Complainant alleges that Respondent uses the disputed domain name in bad faith under Policy 4(b)(iv) by using the domain name to attract customers for commercial gain. See Allianz of Am. Corp. v. Bond, FA 680624 (FORUM June 2, 2006) ("finding bad faith registration and use under Policy 4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting").

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

Having regard to the Panel's finding in relation to bad faith, it is unnecessary to consider whether the Complainant has 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 not, 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 the 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.

The Complainant has shown that it has rights in the FRONTLINE and FRONTLINE PLUS trademarks, which it uses in relation

to pet care products. The disputed domain name <cheapestfrontlineplus.com> is confusingly similar to each of those marks, the word "cheapest" doing nothing to detract from the distinctiveness of the marks. The gTLD ".com" is inconsequential and may be disregarded.

Having regard to the Panel's finding in relation to Bad Faith, it is unnecessary to consider whether the Complainant has 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).

As to bad faith, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

(i) circumstances indicating that the respondent has 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 respondent’s 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 on-line 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.

As to registration, the disputed domain name was registered on August 12, 2020, several years after the registration of the Complainant's marks, which the Panel accepts have become very well-known in relation to the Complainant's pet care products, so the Panel finds that the Respondent is likely to have been aware of the Complainant and its marks when registering the disputed domain name. However, there is nothing in the Amended Complaint and its Annexes from which the Panel is able to infer any of the purposes identified in sub-paragraphs 4(b)(i), (ii) or (iii) and, although the circumstances set out in paragraph 4(b) are not exhaustive, the Panel is not prepared to find that the disputed domain name was registered in bad faith, since the ordinary meaning attributable to the disputed domain name <cheapestfrontlineplus.com> is that the Respondent is in the business of selling the genuine pet care products of the Complainant. In the absence of any evidence whatsoever of the Respondent's use of the disputed domain name, discussed below, the Panel is not prepared to infer an improper purpose in relation to its registration.

As to use, on September 15, 2020 the Complainant was asked by the Panel to clarify the following statement in the Amended Complaint: “The disputed domain name redirects to a content unrelated to the domain name (Annex 5).” The Complainant was informed that Annex 5 does not appear to meet that description and appears to resolve from <frontlineplus.com>, not from the disputed domain name.

The Complainant responded on September 21, 2020 as follows: "The Complainant confirms that the disputed domain name redirects to a content related to the Complainant 's products. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use", citing 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 noncommercial 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”) and 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.").

The only evidence put forward by the Complainant of the use to which the Complainant alleges the disputed domain name is being put is Annex 5 to the Amended Complaint. However, as was noted in the Panel's request to the Complainant for clarification, Annex 5 is a website page which appears to resolve from the domain name <frontlineplus.com>, not from the disputed domain name <cheapestfrontlineplus.com>. Despite being asked to clarify this, the Complainant did not do so. Accordingly, in the absence of any evidence of use of the disputed domain name, the Panel is unable to conclude that the disputed domain name is being used in bad faith and the Complaint must be rejected, without prejudice to any refiled Complaint containing evidence of actual use of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **CHEAPESTFRONTLINEPLUS.COM**: Remaining with the Respondent

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2020-09-26

Publish the Decision