Decision for dispute CAC-UDRP-103255

Case number	CAC-UDRP-103255
Time of filing	2020-08-31 10:56:26
Domain names	frontline.plus

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE / MERIAL

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	S Jon Grant

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

(i) International trade mark registration no.1245236, dated 30 January 2015, for the word mark FRONTLINE, in classes 3 and 5 of the Nice Classification; and

(ii) US trade mark registration no. 2763796, dated 16 September 2003, for the word mark FRONTLINE PLUS, in class 5 of the Nice Classification.

The second of these marks is registered in the name of Merial Corporation. Nonetheless, the Panel is satisfied that the Complainant also has trade mark rights in the terms FRONTLINE PLUS. In effect, although the USPTO register provides that the FRONTLINE PLUS mark's holder is Merial Corporation, the Panel notes the following: (i) the Complainant states in the Complaint that "the company MERIAL was integrated in this unite on [sic] 2017", and this has not been disputed by the Respondent; (ii) the trade mark holders of FRONTLINE and FRONTLINE PLUS share the same postal address on their respective registers; and (iii) the Complainant's website provides an express reference to FRONTLINE PLUS as its trade mark.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

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

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant states that it is a leading global player in the pet and equine markets. The Complainant submits evidence that it has registered rights in the trade mark FRONTLINE for the treatment and prevention of fleas, ticks and chewing lice in dogs and cats, and aids in the control of sarcoptic mange in dogs, namely International trade mark registration no. 1245236, dated 30 January 2015, for the word mark FRONTLINE.

The disputed domain name <frontline.plus> was registered on 21 August 2020.

The Complainant contends that the disputed domain name is identical to the Complainant's trade mark FRONTLINE, and to the Complainant's US trade mark registration no. 2763796, for the word mark FRONTLINE PLUS, dated 16 September 2003, the latter of which was registered in the name of the company Merial Corporation. The Complainant states that Merial Corporation was integrated into its corporation in 2017 (collectively, the Complainant's trade marks). The Complainant argues that the Respondent could not have ignored the Complainant's trade marks at the time of registering the disputed domain name <frontline.plus>.

Relying on the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0), paragraph 1.11, the Complainant further contends that the Top Level Domain (TLD) suffix (".plus") is typically disregarded in the assessment under paragraph 4(a) of the Policy when comparing disputed domain names and trade marks.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts 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, or has any business with, the Respondent. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade marks, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not identified in the Whois database information of record for the disputed domain name, which would suggest that the Respondent is not commonly known by the disputed domain name.

The Complainant further states that the disputed domain name resolves to a parking page with commercial links related to the Complainant and its activities, and that past UDRP panels have found this not to be a bona fide offering of goods or services or legitimate noncommercial or fair use.

Lastly, the Complainant advises that the disputed domain name is being offered for sale, which would further evidence the Respondent's lack of rights or legitimate interests in the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant asserts that the Respondent has registered the disputed domain name with the sole intention to sell it for out-of-pockets costs, which evidences bad faith registration and use.

The Complainant further asserts that, by registering and using the disputed domain name, the Respondent is intentionally using it to attract Internet users to the Respondent's website thereby creating a likelihood of confusion. The Complainant also avers that the Respondent is attempting to attract for commercial gain users to its website by creating the impression that the Respondent's website is somehow associated with the Complainant.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trade marks 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

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

i. The disputed 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 respect of the disputed domain name; and

iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

In order to succeed under the first element of the Policy, however, it is imperative that the Complainant provides evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark(s).

Upon review of the case file, the Panel is satisfied that the Complainant has trade mark rights in the term FRONTLINE, dating back to 2015, covering goods in classes 3 and 5 of the Nice Classification.

Whilst the FRONTLINE trade mark would suffice for the purpose of assessing identity or confusing similarity under the Policy, the Panel is satisfied that the Complainant also has trade mark rights in the terms FRONTLINE PLUS, dating back to 2003. In effect, although the USPTO register provides that the FRONTLINE PLUS mark's holder is Merial Corporation, the Panel notes the following: (i) the Complainant states in the Complaint that "the company MERIAL was integrated in this unite on [sic] 2017", and this has not been disputed by the Respondent; (ii) the trade mark holders of FRONTLINE and FRONTLINE PLUS share the same postal address on their respective registers; and (iii) the Complainant's website provides an express reference to FRONTLINE PLUS as its trade mark.

In relation to the Complainant's trade mark FRONTLINE, the Panel notes that TLD suffixes are typically disregarded in the assessment of the first element of the Policy. The reason for that is because a TLD is part of the anatomy of a domain name, being the last component positioned right after the final dot (e.g. ".com", ".org", ".net") (see CAC Case No. 102597, AERO Vodochody AEROSPACE a.s. v Jiří Dvořák; CAC Case No. 101736, Novartis AG v Sam Tetlow / 1970). In this context, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark FRONTLINE.

As a result, the Panel finds that the Complainant has succeeded under the requirement of paragraph 4(a)(i) of the Policy.

Notwithstanding the above, and for the sake of completeness, the Panel also notes that TLD suffixes might impact the analysis of the first element of the Policy under certain circumstances (see e.g. Zions Bancorporation v. Mohammed Akik Miah, WIPO Case No. D2014-0269; and Totaljobs Group Limited v. Faisal Khan, CreativeMode Ltd, WIPO Case No. D2017-0295). There have also been cases in which the complainant's trade mark is the combination of the second-level portion of the domain name and the TLD suffix (See e.g. Bayerische Motoren Werke AG v. Masakazu/Living By Blue Co., Ltd., WIPO Case No. DMW2015-0001; and Swarovski Aktiengesellschaft v. Aprensa UG haftungsbeschraenkt, Mike Koefer, WIPO Verfahren Nr. D2016-2036). The TLD suffixes may further resonate effects in the ambit of the second and third elements of the Policy (WIPO Jurisprudential Overview 3.0, paragraph 1.11.2).

The Panel notes that the disputed domain name <frontline.plus> incorporates the Complainant's trade mark FRONTLINE PLUS in its entirety. Moreover, in the context of the present matter, the Panel notes that the TLD suffix ".plus" reinforces confusion with the Complainant's trade mark FRONTLINE PLUS.

Accordingly, the Panel finds that the disputed domain name is also identical to the Complainant's trade mark FRONTLINE PLUS, the result of which being that the Complainant has succeeded under the requirement of paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

The second element of the Policy provides that the Respondent shall demonstrate that it has rights or legitimate interests in the disputed domain name. It therefore falls on the Complainant the burden to refute any of such allegations.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain name, as follows:

(i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The evidentiary standard under the UDRP proceedings is such that, where a complainant makes out a prima facie case that

the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to provide evidence to the contrary.

The Respondent did not submit a Response in these UDRP proceedings. Therefore, the Panel will determine the matter based upon the available evidence.

Having considered the case file, the Panel notes that the disputed domain name resolves to a 'parked' page, which contains links related to the business of the Complainant generally, some of which redirect Internet users to sites of the Complainant's arguable competitors in the field of products for companion animals, and possibly undertaking a potential 'click through' activity. On balance, the presence of such links suggest that the Respondent might have intended to obtain commercial gain by misleadingly diverting consumers to Complainant's competitors' sites.

The Complainant has also provided evidence alluding to the fact that the Respondent is offering the disputed domain name for sale.

In the Panel's view, it is rather difficult to conceive of any circumstances in which the above might fall within the category of a bona fide activity or demonstrable preparation thereof. On this point, the Panel deems opportune to draw the parties' attention to the temporal matrix of this circumstance under the Policy: "before any notice of the dispute" – there is no evidence on file to demonstrate any such circumstance. Nor does it appear that the disputed domain name is currently being used in a noncommercial fashion or in a way that would otherwise be considered a fair use under the Policy, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's marks.

Moreover, and being mindful of the circumstances set out at paragraph 4(c) (ii) of the Policy, the Panel also considers that there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

In addition, the Panel notes that the disputed domain name resolves to a website where there is a disclaimer at the bottom of the page stating that the links are generated by a third party which has no relationship with the Respondent. The WIPO UDRP consensus view provides that a respondent cannot disclaim responsibility for content appearing on the website associated with the domain name, and that such links would "[n]ot vest the respondent with rights or legitimate interests" (WIPO Jurisprudential Overview 3.0, paragraph 3.5).

UDRP panels have also held that the use of a domain name to host such a 'parking slot' does not represent bona fide offerings "[w]here such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users". (WIPO Jurisprudential Overview 3.0, paragraph 2.9).

Furthermore, the choice of a domain name (including its TLD suffix) which incorporates the Complainant's trade mark is further evidence of lack of rights or legitimate interests (WIPO Jurisprudential Overview 3.0, paragraph 2.4).

For the reasons stated above, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence presented by the Complainant in these proceedings, the Panel finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a) (ii) of the Policy.

III. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith.

The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

1. circumstances indicating that the respondent has registered or has 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

2. 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 you have engaged in a pattern of such conduct; or

3. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

4. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant, and has also performed independent, albeit discreet, factual research on certain aspects of this case. The Panel takes the view that the circumstances in this case which are material to the assessment of bad faith registration and use are intertwined and, as such, will be dealt with by the Panel concurrently.

The Panel lists below a number of indicia which points in the direction of the Respondent's bad faith registration and use of the disputed domain name under the Policy:

• The disputed domain name wholly incorporates the Complainant's trade marks;

• As far as the Panel can see, there is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in August 2020;

• The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and the Panel is empowered to draw adverse inferences by such failure (UDRP Rule 14 (b));

• There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant and the Complainant denies any association;

• The website to which the dispute domain name resolves contains links which direct to websites which appear to be the Complainant's competitors. This suggests that the disputed domain name was registered and is being used for a potential financial gain, including possible 'click through' revenue (see e.g. Arla Foods Amba v. I S / ICS INC, CAC Case No. 101764). For the sake of argumentation, even if the Panel was to disregard the links contained on the Respondent's website, the Panel considers that the case circumstances would warrant a finding of bad faith under the passive holding doctrine. Having considered the totality of the circumstances, the reasons for this include (i) the failure of the Respondent to submit a Response or provide any evidence of actual or contemplated good faith use; (ii) the Respondent's use of a privacy shield to conceal its true identity; and (iii) the unlikeliness of any good faith use of the disputed domain name (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003);

• There does not appear to be any plausible good faith use associated with the disputed domain name;

• The Panel further notes the Respondent's pattern of opportunistic behavior, as follows (i) the Respondent registered domain names targeting third parties' registered trade marks in the past; (ii) the Respondent used those domain names as 'parked' pages; and (iii) the Respondent did not present a defence in any of these prior cases (see Tata Motors Limited v. S Jon Grant, WIPO Case No. D2015-0092); Andrey Ternovskiy dba Chatroulette v. S Jon Grant, WIPO Case No. D2018-1110; Crédit Industriel et Commercial S.A. v. Super Privacy Service LTD c/o Dynadot / S Jon Grant, WIPO Case D2020-1099; Andrey Ternovskiy dba Chatroulette v. S Jon Grant, WIPO Case No. D2018-2550; Twitch Interactive, Inc. v. S Jon Grant, Forum Claim No. FA1504001614428; Google LLC v. ZhangWei / S Jon Grant / jerry, Forum Claim No.: FA2005001896568); and

• The disputed domain name has been listed for sale on the Afternic's domain parking platform, for an amount in excess of the out-of-pocket costs directly related to the disputed domain name (see e.g. CAC No. 101705, TRISKALIA v ROGER PRIDEAUX).

The Panel is of the view that, taken together, the above are compelling indicia that the Respondent has registered and is using the disputed domain name in bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has made a prima facie showing that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRONTLINE.PLUS**: Transferred

PANELLISTS

Name	**Dr Gustavo Moser**

DATE OF PANEL DECISION 2020-09-30

Publish the Decision