Decision for dispute CAC-UDRP-103336

Case number	CAC-UDRP-103336
Time of filing	2020-10-06 12:49:39
Domain names	frnotline.com, frontlein.com, frontlineapi.com, frontlineuse.com, frontlineusing.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE / MERIAL

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Kevin Gervais

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a trademark for the sign FRONTLINE in Classes 3 and 5 with an International Trademark (France), registered on January 30, 2015 (the “FRONTLINE trademark”).

FACTUAL BACKGROUND

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

Complainant alleges that it is the number one global player in the pet and equine markets. Its products provide longer and healthier lives for companion animals. It alleges further that its mark FRONTLINE is well-known in the market as the source 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.

The disputed domain names <frnotline.com>, <frontlein.com>, <frontlineapi.com>, <frontlineuse.com>, and <frontlineusing.com> constitute misspelled words of the Complainant’s registered trademark FRONTLINE. Complainant alleges that Respondent has created typosquatted domain names that resolve to websites with hyperlinks that support the

conclusion that Respondent had actual knowledge of Complainant and its mark.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant submits that <frnotline.com>, <frontlein.com>, <frontlineapi.com>, <frontlineuse.com>, and <frontlineusing.com> > are confusingly similar to the FRONTLINE trademark because they incorporate typosquatting versions of the mark. It alleges that the additions of “api”, “use,” “using” to three of these domain names does not lessen the confusing similarity but enhances it.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain names, because it has not been authorized by the Complainant to use the FRONTLINE trademark, and the disputed domain names do not correspond to the name of the Respondent. The Complainant adds that the Respondent does not carry out a fair or non-commercial use of the disputed domain names.

The Complainant contends further that the disputed domain names were registered and are being used in bad faith. According to the Complainant, the FRONTLINE trademark is distinctive and well-known around the world, and that it is evident from the hyperlinks on the landing page that the Respondent registered the disputed domain names with actual knowledge of the FRONTLINE trademark. The disputed domain names are not used for any bona fide purpose. Further, by using the disputed domain names for pay per click income, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to websites of competitors by creating a likelihood of confusion with the Complainant's FRONTLINE trademark as to the source, sponsorship, affiliation, or endorsement of his website.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and did not submit any arguments or evidence in its defence. In such event, UDRP Rule 14 provides (a) that the “Panel shall proceed to a decision on the complaint” and (b) that “the Panel shall draw such inferences therefrom as it considers appropriate.”

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

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Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the 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 domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case and defend its registration of the subject domain name.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

Notwithstanding Respondent's default Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, § 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) 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.

A. Identical or confusingly similar, §4(a)(i)

A side-by-side comparison of the domain names and the FRONTLINE trademark indicates that <frnotline.com>, <frontlein.com>, <frontlineapi.com>, <frontlineuse.com>, and <frontlineusing.com> are confusingly similar to the mark because it incorporates the mark in its entirety albeit with altering the sequence of character with the inconsequential additions in three of the domain names. Neither these additions nor the applicable top-level domains create a separate or distinctive term. See Bloomberg Finance L.P. v. Nexperian Holding Limited, FA 1782013 (Forum June 4, 2018) (<bloombertvoice.com>); and WIPO Overview, § 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive...meaningless or otherwise) would not prevent a finding of confusing similarity under the first element."
Having demonstrated that the subject domain names are confusingly similar to Complainant's FRONTLINE trademark the Panel finds Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights and legitimate interests, §4(a)(ii)

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the disputed domain names, but this burden is light. It is sufficient in the first instance for Complainant to allege a prima facie case, and if it does so, the burden shifts to respondent to rebut the allegations. Croatia Airlines d.d. v. Modern Empire Internet Ltd., D2003-0455 (WIPO August 21, 2003) (holding that "[s]ince it is difficult to prove a negative ... especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests–and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light."

Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names, because the Respondent has no permission to use the FRONTLINE trademark and is not commonly known under the disputed domain names. The Complainant also points out that the disputed domain names resolve to websites that are both confusing and designedly deceptive as further set forth in Part C below. See Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, FA 1741129 (FORUM Aug. 16, 2017) (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

The Panel finds that Complainant has satisfied its prima facie burden. See Deutsche Telekom AG v. Britt Cordon, D2004-0487 (WIPO September 13,2004) (“[O]nce a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent/”) It would ordinarily then be open to the Respondent to establish its right or legitimate interest in a domain name by showing any of the following nonexclusive circumstances:

(i) before any notice to you [respondent] of the dispute, your 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) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are 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.
If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail. Where respondents fail to respond the Panel must assess the record before it. Here, the misspellings in the second level domains and the websites are highly informative of Respondent’s intent and it is thus called upon to explain its choices. See Deutsche Telekom AG v. Britt Cordon, D2004-0487 (WIPO September 13, 2004) (holding that “once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.).

The Panel finds that Respondent’s registration of the domain names is typosquatting and this supports the conclusion that it lacks rights and legitimate interests in the domain names. See Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe, D2007-1695, (WIPO January 22, 2008) (holding that "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"); also, Spotify AB v. The LINE The Line / The Line, FA1801001765498 (Forum February 6, 2018); and The Hackett Group, Inc. v. Brian Herns / The Hackett Group, FA1412001597465 (Forum February 6, 2015) (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy paragraph 4(a)(ii).”).; Vance Int’l, Inc. v. Abend, FA0704000970871((Forum June 8, 2007) (holding that “[e]ven if click-through referral fees generated by the Disputed Domains are not being directly received by Respondent, the fees are being earned by parties that Respondent has licensed or otherwise authorized to use the Disputed Domains.). See also WIPO Overview 3.0, section 2.9 for the proposition that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links, as is the case here, compete with or capitalize upon the reputation and goodwill of a complainant’s trademark.

No rebuttal proof explaining the choice of these misspelled second level domains having been offered, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names. Thus, Complainant has also satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith, §4(a)(iii)

The Complainant must then prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith. The consensus expressed in WIPO Overview 3.0, section 3.1.4. is that “the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The Panel finds that the domain names are calculated to trade on Complainant’s name by exploiting it in a practice known as typosquatting. Absent any evidence to the contrary, this supports a presumption bad faith which is further strengthened by the strong inference of actual knowledge of Complainant and the FRONTLINE trademark. Paragraph 4(b) of the Policy sets out four nonexclusive circumstances, any one of which is evidence of the registration and use of a domain name in bad

faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

(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 the respondent's 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 the site or location.

The domain names in this case resolve to active websites containing hyperlinks to locations of other parties offering competitive products and in some cases with a "Frontline" link. Complainant has adduced sufficient evidence to prove Respondent's bad faith. There is a well-developed consensus of UDRP jurisprudence reported in the WIPO Overview of WIPO Panel Views (3.0), Section 3.1.1 for the proposition that the presence of PPC advertisements and links to Complainant's competitors has long been acknowledged as evidence of bad faith use.

Finally, the Complainant has cited several prior UDRP decisions which it correctly submits support all of the foregoing contentions. StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, D2018-0497 (WIPO May 4, 2018) (holding that Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website).

In this case, the FRONTLINE trademark has a long history of use in commerce predating the registration of the domain names. As the evidence demonstrates bad faith use, so the priority of the trademark establishes bad faith registration. The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain names in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct.

Accordingly, the Respondent has registered and used the disputed domain names in bad faith and that its conduct firmly supports the conclusion the registration of <frnotline.com>, <frontlein.com>, <frontlineapi.com>, <frontlineuse.com>, and <frontlineusing.com> was an abusive act. Thus, Complainant has also satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRNOTLINE.COM**: Transferred
2. **FRONTLEIN.COM**: Transferred
3. **FRONTLINEAPI.COM**: Transferred
4. **FRONTLINEUSE.COM**: Transferred
5. **FRONTLINEUSING.COM**: Transferred

PANELLISTS

Name	**Gerald M. Levine, Ph.D, Esq.**

DATE OF PANEL DECISION 2020-11-03