

Decision for dispute CAC-UDRP-103760

Case number	CAC-UDRP-103760
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Time of filing	2021-04-28 09:45:28
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Domain names	frontline.dog
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Name	Gabriella Garlo
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns the following trademarks:

- International trademark No. 621912 "FRONTLINE", registered since 9 June 1994 in Class 5 of the Nice Classification List;
- International trademark No. 1245236 "FRONTLINE", registered since 30 January 2015 in Classes 3 and 5.

The Complainant is the registrant of <frontlineplus.com>.

The disputed domain name <frontline.dog> was registered to the Respondent on 21 April 2021.

FACTUAL BACKGROUND

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

The Complainant is one of the world's largest pharmaceutical companies. Part of its business is in pet and equine healthcare products which include the trademark-registered brand "FRONTLINE", indicated for the treatment and prevention of fleas, ticks and chewing lice on dogs and for control of canine sarcoptic mange. A variant, "FRONTLINE PLUS", is available for both dogs

and cats.

The disputed domain name <frontline.dog> resolves to a parking page with commercial links.

In addition to these facts, the CAC Case Administrator included in the Case File the CAC e-mail to the Respondent giving notification of the present proceeding with proof that this was successfully relayed. The Respondent's e-mail provider is Protonmail.com.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

With respect to identification of its rights (see above heading), the Complainant contends that it possesses a larger portfolio of trademarks and several further domain names comprising the terms "FRONTLINE" (without submitting evidence in these regards).

With respect to the UDRP's requirements and relying throughout on the Decisions of previous UDRP ADR Panels, the Complainant states that the disputed domain name's stem is identical to its trademark-protected "FRONTLINE" brand. The TLD suffix ".DOG" for its part does not change the overall impression of connection to the Complainant's "FRONTLINE" brand or prevent the likelihood of confusion with it.

The Complainant invokes especially WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., as to it being required to make out only a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name according to the UDRP.

It then further contends that:

- The disputed domain name was registered many years after the Complainant had established a strong reputation and goodwill in its mark.
- The addition of the TLD designator <.DOG> is not coincidental, as it refers to the Complainant's activities related to its mark.
- All Google results for the terms "FRONTLINE" with "DOG" relate to the Complainant's products (a screenshot is adduced in support of this contention).
- It is inconceivable that the Respondent chose to register the disputed domain name without the Complainant and its trademark in mind, whereas, as noted in a previous ADR case successfully brought by the Complainant against a different Respondent, WIPO Case No. D2017-0660, Boehringer Ingelheim Pharma GmbH & Co.KG v. Pan Jing, a cursory internet search would have disclosed the trade mark and its extensive use by the Complainant.
- The Respondent is not affiliated with or authorized by the Complainant in any way.
- The Respondent is not identifiable by the disputed domain name.

Thirdly and lastly, the Respondent has attempted for the Respondent's own commercial gain to attract Internet users to the Respondent's website thanks to unauthorized use of the Complainant's trademarks, which is evidence of bad faith.

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 the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel nevertheless observes that the factual analysis provided by the Complainant omitted checking certain basic details, notably the veracity of the Respondent's name, postal address and telephone number, which would have revealed significant flaws in these identification details. The Panel was therefore obliged to take these flaws into account on the basis of its own analysis of the Case File and to perform a rudimentary check of its own through use of its general powers under the Rules.

Greater diligence as to checking basic factual data is thus recommended to future Complainants.

PRINCIPAL REASONS FOR THE DECISION

The Panel in this uncontested proceeding decides as follows with respect to the UDRP's three-part cumulative test:

1. Identity or confusing similarity of the disputed domain name with a trademark in which the Complainant has rights

The Complainant has shown that it has rights in the "FRONTLINE" brand, which is the sole component of the disputed domain name's stem. However, "frontline" is, on its own, a generic term that can be used in a great many instances, several of which will not be challengeable by the Complainant. It is the particularity of this proceeding that the Respondent has combined this term semantically with the gTLD suffix "dog". Doing so connotes the area of the Complainant's business to which its trademark-protected products pertain and the Panel thus finds that the disputed domain name is confusingly similar to the "FRONTLINE" trademark in particular.

2. The Respondent's lack of rights or legitimate interests in respect of the disputed domain name

This criterion requires sufficient proof in each proceeding, including by reasonable inference from the circumstances of the proceeding.

In the present case, the Panel is not convinced by certain of the Complainant's assertions, namely as to:

- The validity of the analogy to the Boehringer Ingelheim Pharma GmbH & Co.KG v. Pan Jing case, since the product brand concerned there (COMBIVENT) was a highly distinctive one, whereas "FRONTLINE" is a generic term and it thus opens up greater potential scope for competing rights or legitimate interests with those of the Complainant.
- The probative value of the "cursory internet search" results that the Complainant advances, since Google, the search engine used, customizes searches based on previous activity, which the Complainant's Authorized Representative -- who performed the search -- is likely to have had with respect to the Complainant itself.

On the other hand, the Case File itself -- especially the Respondent's identification details -- put the Panel on inquiry as to the veracity of the Respondent's identity, from which it noticed that:

- the first name in the Protonmail (privacy) e-mail address corresponds to a form different from its usual rendition in Portuguese (i.e. "Gabriela", as opposed to "Gabriella" as used in the registrar details obtained by the CAC Case Administrator) and
- the postal address lacked any street number, indicating only a tower at a large downtown centre in São Paulo.

The Panel therefore exercised its general powers to investigate the identification details further and determined that the

telephone number given relates to a restaurant in a different street, while the Respondent's name as it appears in this proceeding is the same as in other ADR proceedings whose findings demonstrate instances of very similar domain name abuse as is alleged here as well as potentially serious fraud (see for example Rheem Manufacturing Company v. WhoisGuard, Inc. / Gabriella Garlo Case No. D2020-2115 and Spinrite Inc. v. WhoisGuard, Inc. / Gabriella Garlo Case No. D2021-0012).

The Panel accepts that the Respondent is not affiliated with or authorized by the Complainant or identifiable by the disputed domain name.

The Panel therefore for these reasons finds that the Respondent lacks any rights or legitimate interest in the disputed domain name.

3. The Respondent's registration and use of the disputed domain name

The Panel, taking note of the above circumstances, accepts that the purpose of the Respondent's registering and using the disputed domain name is for commercial gain through attracting internet users thanks to creating an association with the Complainant's trademark-protected brand, and it finds that the registration and use of the disputed domain name are thereby in bad faith.

The Panel accordingly orders the disputed domain name to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **FRONTLINE.DOG**: Transferred

PANELLISTS

Name	Kevin J. Madders
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DATE OF PANEL DECISION	2021-06-07
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Publish the Decision