

Decision for dispute CAC-UDRP-104327

Case number CAC-UDRP-104327

Time of filing 2022-02-03 10:51:01

Domain names frontlinefelines.com

Case administrator

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

Complainant

Organization BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Peter Kelly

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 name.

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the International trademark registration FRONTLINE, n° 1245236 registered since January 30, 2015, for goods in classes 03 and 05, having several countries designated for protection and the International trademark registration FRONTLINE PET CARE n° 1295385 registered since January 19, 2016, for goods in classes 03, 05, 10, 31 having several countries / territories designated for protection, among which also the European Union.

Although within the filed complaint it was mentioned the European trademark FRONTLINE PET CARE® n° 2932853 registered since January 19, 2016 (the Complainant provided excerpts of the IR TMs FRONTLINE, n° 1245236 and FRONTLINE PET CARE n° 1295385).

The Panel will consider only the international trademark registrations excerpts identified within one of the annexes to the filed complaint as moreover the European Union trademark n° 2932853 is not FRONTLINE PET CARE.

FACTUAL BACKGROUND

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

The Boehringer Ingelheim Animal Health business is a global leader in the animal health industry and part of family-owned Boehringer Ingelheim, founded in 1885. Its greatest commercial success is Frontline, an anti-parasite for pets.

Furthermore, the Complainant owns multiple domain names consisting in the wording "FRONTLINE", such as <frontline.com> registered and used since January 28, 1999.

The disputed domain name <frontlinefelines.com> was registered on January 26, 2022 and redirects to a blank page with message "Coming Soon".

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant's contentions are the following:

The disputed domain name <frontlinefelines.com> is confusingly similar to the Complainant's earlier trademarks FRONLINE.

The Complainant asserts that the addition of the generic term "felines" does not change the overall impression of the designation as being connected to the Complainant's trademark FRONTLINE®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and domain names associated. On the contrary, the association of term "felines" with the trademark refers to the Complainant's products.

Moreover, the Complainant asserts that the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark FRONTLINE®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated. The Complainant made reference to the 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.").

Consequently, in the Complainant's view the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons.

In this sense, the Complainant first asserts that the Respondent is not identified in the Whois database as the disputed domain name. The Complainant asserts that 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. The Complainant further makes reference to the panels' decisions in cases 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 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).")

The Complainant further contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant asserts that it 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 trademark FRONTLINE, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant asserts that the disputed domain name redirects to a blank page with message "Coming

Soon“.

Lastly, the Complainant points out that the Respondent has not used or made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

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.

The Complainant further argues that the disputed domain name has been registered, and is being used in bad faith.

The Complainant's states that the disputed domain name is confusingly similar to its trademark FRONTLINE. The addition of words "felines" reinforces the impression to be affiliate to the Complainant. Therefore, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark. Therefore, Internet users might be confused by thinking that the disputed domain name is related to the Complainant (and this seems to be the intent behind the registration).

The Complainant further asserts that the consensus view amongst panels appointed under the Policy is that the fact that a domain name is not active does not prevent a finding of bad faith (see section 3.3 of the WIPO Overview 3.0, "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding"; see also Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246).

On these bases, the Complainant concluded that the Respondent has registered and is using the disputed domain name in bad faith.

Finally, the Complainant asserts that past Panels have confirmed that the Complainant's trademarks FRONTLINE and FRONTLINE PLUS are well-known. Reference was made to CAC Case No. 103184, Merial v. Domain Administrator <frontlineplus.com> ("There is no question about the Complainant's rights. These are well-known marks [FRONTLINE® and FRONTLINE PLUS®] 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.").

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

I. Confusing Similarity

The Panel agrees that the disputed domain name <frontlinefelines.com> is confusingly similar to the Complainant's earlier trademarks FRONTLINE. The addition of the generic term "felines" does not change the overall impression of the designation as being connected to the Complainant's trademark FRONTLINE and the Complainant's products.

Moreover, the extension ".com" is not to be taken into consideration when examining the similarity between the Complainant's trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L'Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

The 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 burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain names. The Respondent is not a licensee of, nor has any kind of relationship with the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

The disputed domain redirects to a blank page with message "Coming Soon". Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name, as other UDRP panels have found.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's trademark FRONTLINE was recognized by past panel's decision (CAC Case No. 103184, Merial v. Domain Administrator <frontlineplus.com>: "There is no question about the Complainant's rights. These are well-known marks [FRONTLINE® and FRONTLINE PLUS®] 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.") as being well-known. The Respondent has chosen to register the domain name which incorporates the Complainant's prior trademark FRONTLINE with addition of the generic term "felines" which is related to the Complainant's products in order to create a confusion with such trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain names, the Respondent was well aware of the Complainant's trademark and has intentionally registered one in order to benefit from the reputation of the Complainant's

trademark.

In the present case, the following factors should be considered:

(i) the Complainant's trademark is a distinctive one;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing a distinctive trademark with the addition of a generic term "felines" which is connected to the Complainant's products which might create confusion among consumers;

(iv) the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name similar to the Complainant's trademark;

(v) the disputed domain name redirects to a blank page with message "Coming Soon", thus, a domain name is not active, aspect which does not prevent a finding of bad faith.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. FRONTLINEFELINES.COM: Transferred

PANELLISTS

Name	Delia-Mihaela Belciu
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DATE OF PANEL DECISION 2022-03-10

Publish the Decision
