# Decision for dispute CAC-UDRP-105490

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| Case number | CAC-UDRP-105490 |
| Time of filing | 2023-06-05 10:52:53 |
| Domain names | spacefalcon.com |

## Case administrator

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

## Complainant

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| Organization | Space Falcon LLC |

## Complainant representative

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| Organization | UDRPKing.com |

## Respondent

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| Name | John ladrok |

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 is the owner of:

Indian trademark SPACE FALCON (word) application no 5957459, filed on May 29, 2023;

This application is pending.

The Complainant relies on common law/unregistered trademark rights.

FACTUAL BACKGROUND

The Complainant is Space Falcon LLC. Space Falcon is an online game in the “Intergalactic Metaverse” that allows players to explore space while battling enemies with premium Sci-Fi NFTs from Cosmos and more. NFTs for in-game items mean players literally own and control what they buy, earn, or craft. Additionally, the Space Falcon game has a cryptocurrency token ($FCON) for buying in-game items. The Complainant’s mission is to create an ecosystem that transforms the gaming industry by leveraging the power of blockchain technology.

The Complainant has an active online presence, including owning the domain name <spacefalcon.io> which has been used and

registered since October 14, 2021.

The Complainant is also active on social media and has generated a significant level of endorsement.

The disputed domain name was initially registered on August 21, 2011. The Respondent acquired it on January 23, 2022.

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PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is identical to its SPACE FALCON unregistered trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith, including by impersonating the Complainant's previous COO (Chief Operations Officer).

In particular, the Complainant submits and documents that although the disputed domain name was initially registered on August 21, 2011, the Respondent acquired the same from HugeDomains.com only on January 23, 2022, and therefore this should be the date to be considered for the purposes of this proceeding, relying on WIPO Overview 3.0, section 3.9 which states that: "...the transfer of a domain name registration from a third party to the respondent is not a renewal and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. This holds true for single domain name acquisitions as well as for portfolio acquisitions".

In support of its argument, the Complainant relies inter alia on an e-mail from HugeDomains confirming the sale from HugeDomains.com to the Respondent and indicating that the "Last Updated date" (i.e. January 23, 2022) in the Public WHOIS is the date on which the new registrant acquired the disputed domain name.

The Complainant further submits that the Respondent, after purchasing the disputed domain name from HugeDomains.com, embarked on a social engineering scam. The Complainant brought the matter to the attention of the Domain Registrar NameCheap.com, and this led to the suspension of the disputed domain name.

Lastly, the Complainant submits that, before said date, it had already acquired common law rights in the distinctive SPACE FALCON trademark through open, continuous and extensive use thereof since its launch on October 14, 2021.

In support of the above, the Complainant submits that:

1) The Complainant has acquired common law rights/secondary meaning in the distinctive SPACE FALCON trademark through open, continuous and extensive use thereof since its launch on October 14, 2021.

2) The use of the SPACE FALCON trademark is evident from the many tweets it has published starting October 14, 2021 and up until November 2021, in which the Complainant announced partnerships with AVStarCapital (November 18, 2021), PandaCapital (November 16, 2021) and FishDAO (November 13, 2021). The Complainant also tweeted upon gaining its first 10k followers on November 9, 2021.

In the Complaint, the Complainant also attached specific tweets for January 2022 and more tweets to the present day. This includes partnerships with Okex Ventures (January 13, 2022), Solace (January 20, 2022) and Neon Labs (November 24, 2022). More particularly, announcements in the third week of January 2022 included the listing of the $FCOIN cryptocurrency/token; the announcement that $4 million of investment had been raised; the welcoming of new advisors, new partnerships, and so on. A further annex to the Complaint contains the trading volume of the Space Falcon $FCON cryptocurrency.

The Complainant also claims that the common law rights it had acquired before January 23, 2022 are shown by the popularity achieved, as evidenced by the number of users (3,600), minutes played (40,391), followers of its Twitter handle (167k followers), and followers on other social networks and media (e.g. Telegram, Instagram, Discord, YouTube, LinkedIn etc.) as of January 21, 2022.

3) The Complainant raised $4 million of investment on January 18, 2022. This was announced on the Complainant's blog at spacefalcon.io, on medium.com, and was published online on various news portals.

4) The Complainant announced the launch of the $FCON cryptocurrency in January 22, 2022.

5) The Complainant submits that the investment raised in itself shows the success of the Complainant's Metaverse SPACE FALCON game and the huge popularity it gained in such a short span of time. The project is backed by numerous partnerships (12) and many more investments (14) as indicated on the homepage of the official website <spacefalcon.io>.

6) The Complainant registered the domain name spacefalcon.io on October 14, 2021 and has used it since then.

7) Targeting of the Trademark

The registrant acquired the disputed domain name on January 23, 2022, with the specific purpose of targeting the Complainant and its trademark, as evidenced by the attempted scam detailed in the documents attached to the complaint.

8) The Complainant asserts and documents the Respondent's attempt to impersonate the COO (at the time of the scam) of the Complainant for the purposes of fraud.

Hence the Complainant, quoting WIPO Overview, Section 1.3, which states that "the fact that a respondent is shown to have been targeting the complainant's mark may support the complainant's assertion that its mark has achieved significance as a source identifier", and several UDRP decisions, affirms that its SPACE FALCON unregistered trademark has achieved significance as a source identifier, and thus has acquired common law rights.

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

PRINCIPAL REASONS FOR THE DECISION

**Substantive Issues**

In order for the Complainant to obtain a transfer of the disputed domain names, paragraph 4(a) of the Policy requires that the Complainant must demonstrate to the Panel that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

**Identical or Confusingly Similar**

The first element inquiry under the Policy proceeds in two parts. First, the Complainant must demonstrate UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, any such trademark is compared with the disputed domain name to assess identity or confusing similarity.

In such comparison, the generic Top-Level Domain ("gTLD"), in this case, ".com", is disregarded on the basis that this is a technical element.

The disputed domain name was initially registered on August 21, 2011. The Complainant has however submitted and sufficiently documented that the Respondent acquired the disputed domain name on January 23, 2022.

Hence, for the purpose of this UDRP, the registration date is January 23, 2022. See WIPO Overview 3.0, section 3.9: "… the transfer of a domain name registration from a third party to the respondent is not a renewal and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith."

The Complainant here claims rights in the unregistered SPACE FALCON trademark through its open, continuous and extensive use since its launch on October 14, 2021.

In order for such a claim to be made out, the evidence before the Panel must show that this term has become a distinctive identifier associated with the Complainant's goods and services.

As is noted in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), relevant evidence of such may include a range of factors, such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

Although the evidence of the use and extent of the Complainant's trademark covers little more than a year, considering factors such as the type and scope of market activities and the nature of the Complainant's goods and services, namely "online gaming, blockchain and NFTs", and the fast growth shown in terms of users and followers, this Panel considers that there is nevertheless sufficient material in the present record to find that the SPACE FALCON trademark has acquired a secondary meaning and therefore that the Complainant has unregistered trademark rights therein for the purposes of the Policy.

In particular, the Complainant is able to show that before the registration of the disputed domain name its SPACE FALCON online game had already reached over 160 thousand followers, had raised several million US dollars from investors, and all this was announced with several articles on internet blogs.

Finally, the Respondent's use of the SPACE FALCON trademark in its e-mail address to impersonate the COO (at the time of the scam) of the Complainant for fraudulent purposes further affirms the Complainant's position regarding its claim to unregistered trademark rights in this term, as it indicates that the Respondent is targeting the trademark, by making deliberate reference to the Complainant's business. As noted in section 1.3 of the WIPO Overview 3.0, "The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier".

In all of the above circumstances, the Panel finds that the Complainant has UDRP-relevant rights in the unregistered SPACE FALCON trademark.

On comparing said trademark to the disputed domain name it is immediately clear that the Complainant's trademark is identical to the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

**Rights or Legitimate Interests**

This Panel finds that the Complainant has made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the name "SPACE FALCON" or by any similar name. The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. In fact, it appears that the Respondent has used the disputed domain name to send e-mails to third parties purporting to be from the former COO of the Complainant (i.e. the Head of Operations/Chief Operating Officer (COO) of the Complainant company in 2021-22). This is neither a bona fide offering nor a legitimate noncommercial or fair use within the meaning of the Policy. The Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name. The Respondent has not formally replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

**Registered and Used in Bad Faith**

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

The Complainant has documented that the Respondent has purposely registered and used the disputed domain name to attempt to defraud others by impersonating the former COO of the Complainant by fraudulently communicating via e-mail using an e-mail address that includes the Complainant's "SPACE FALCON" trademark. The Respondent has thus misrepresented to others that it was a senior manager at Space Falcon LLC.

This conduct is, in the Panel's view, sufficient to show that the Respondent knew of the Complainant and its trademark and intentionally intended to create an association with the Complainant and its business at the time of the registration of the disputed domain name.

The Panel finds that the Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under the Policy.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has 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. **spacefalcon.com**: Transferred

## PANELLISTS

| Name | **Fabrizio Bedarida** |
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DATE OF PANEL DECISION 2023-07-12

Publish the Decision