

## Decision for dispute CAC-UDRP-105944

Case number	<b>CAC-UDRP-105944</b>
Time of filing	<b>2023-11-08 09:47:04</b>
Domain names	<b>frontlineplusfordogsfleas.com</b>

### Case administrator

Name	<b>Olga Dvořáková (Case admin)</b>
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### Complainant

Organization	<b>Boehringer Ingelheim Animal Health France</b>
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### Complainant representative

Organization	<b>NAMESHIELD S.A.S.</b>
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### Respondent

Name	<b>Dmytro Fedoruk</b>
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#### 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 owns a large portfolio of trademarks for and incorporating the term "FRONTLINE" including the following:

- International trademark FRONTLINE registration number 621912 registered on June 9, 1994 for goods in international class 5;
- International trademark FRONTLINE registration number 1245236 registered on January 30, 2015 in international classes 3 and 5;
- United States of America registered trademark FRONTLINE PLUS, registration number 2763796, registered on the Principal Register on September 16, 2003 for goods in international class 5.

Furthermore the Complainant claims rights in the FRONTLINE and FRONTLINE PLUS marks established by use of the marks in its business providing animal health products.

#### FACTUAL BACKGROUND

The Complainant carries on business as a provider of animal health products and is the owner of the registered trademark FRONTLINE which is used for products for the treatment and prevention of fleas, ticks and chewing lice in dogs and cats.

The Complainant claims rights in the Disputed Domain Name established by its ownership of the trademark registrations described above and extensive use of the FRONTLINE mark in its animal health products in trade, including on its website at

<www.frontline.com>.

The Complainant adds that it has an established Internet presence and owns a portfolio of Internet domain names consisting of or incorporating the term "FRONTLINE", including the domain name <frontline.com> registered and used since January 28, 1999.

The disputed domain name <frontlineplusfordogsfleas.com> was registered on October 27, 2023 and resolves to parking page with commercial links and Respondent has created a DNS mail exchange record ("MX").

There is no information available about the Respondent, except for that provided in the Complaint, the Registrar's Whois and the information provided by the Registrar in response to the request by the Center for details of the registration of the Disputed Domain Name for the purposes of this proceeding. The Registrar has confirmed that the Respondent is the registrant of the Disputed Domain Name.

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#### PARTIES CONTENTIONS

##### COMPLAINANT:

The Complainant alleges that the Disputed Domain Name is identical or confusingly similar to the FRONTLINE trademark in which the Complainant has rights arguing that the addition of generic terms "PLUS FOR DOGS FLEAS" to the FRONTLINE mark, does not change the overall impression of the designation as being connected to the Complainant's trademark FRONTLINE.

The Complainant adds that the additional terms do not prevent the likelihood of confusion between the Disputed Domain Name and the Complainant, its trademarks and the Complainant's associated domain names, but on the contrary, the association of terms "plus for dogs fleas" worsens the likelihood of confusion between the Disputed Domain Name And the Complainant's trademark.

The Disputed Domain Name directly refers to the Complainant's products FRONTLINE PLUS FOR DORGS, a treatment and prevention of fleas, ticks and chewing lice in dogs.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name, arguing that the Respondent is not identified by the Disputed Domain Name in the Whois database. Past panels established under the Policy have held that a Respondent was not commonly known by a domain name at issue if the WHOIS information was not similar to the disputed domain name. Citing for instance *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Group Forum Claim Forum Claim FA 1781783, <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 asserts that the Respondent is neither affiliated with nor authorized by the Complainant in any way.

Furthermore, the Complainant alleges that the Respondent does not engage in any activity for the Complainant, nor does the Complainant carry out any business with the Respondent.

Additionally, the Complainant asserts that it has granted neither license nor authorization to the Respondent to make any use of the Complainant's trademark FRONTLINE, nor to apply for registration of the Disputed Domain Name.

Furthermore, the Complainant argues that the screen capture of the webpage to which the Disputed Domain Name resolves which has been exhibited in an annex to the Complaint shows that the Respondent is using the Disputed Domain Name to resolve to a registrar's parking page with commercial links. It is contended that past panels established under the Policy have found that such use of a domain name does not constitute a *bona fide* offering of goods or services or legitimate non-commercial or fair use for the purposes of the Policy. The Complainant cites for example *Vance Int'l, Inc. v. Abend Forum Claim FA 970871*, (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees).

The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith, arguing that the Disputed Domain Name, which is confusingly similar to the Complainant's FRONTLINE and FRONTLINE PLUS marks was registered several years after the registration of the Complainant's marks.

Moreover, the Complainant again refers to the screen capture of the webpage to which the Disputed Domain Name resolves which is exhibited in an annex to the Complaint, and argues that by using the Disputed Domain Name as the address of a parking page with commercial links the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith. Citing for instance *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC WIPO Case No. D2018- 0497*, ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

Finally, the Complainant refers to the results of a DNS query search which it has carried out, and is exhibited in an annex to the Complaint. The search result confirms that MX servers are configured to the Disputed Domain Name, which Complainant argues, suggests that it may be actively used for email purposes. Citing for example, *JCDECAUX SA v. Handi Hariyono CAC* Case No. 102827 (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

#### RESPONDENT:

No administratively compliant Response has been filed.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### **The Complainant’s Rights**

The Complainant has provided convincing, uncontested evidence that it has rights in the FRONTLINE mark, established by the ownership of the portfolio of trademark and service mark registrations described above and the reputation and goodwill that it has established in the mark by extensive use in its animal health and hygiene products business.

##### **Confusing Similarity**

The disputed domain name <frontlineplusfordogsfleas.com> consists of Complainant’s FRONTLINE mark in its entirety, in combination with a string of letters that produce the words “plus for dogs fleas” and the gTLD extension <.com>.

Complainant’s FRONTLINE mark is clearly recognizable as being the initial, dominant and only distinctive element in the Disputed Domain Name.

The word “plus” is a laudatory epithet in the context of the Disputed Domain Name, inferring strength or effectiveness, and “for dogs fleas” is a descriptive phrase describing the use to which the products sold by the Complainant under the FRONTLINE mark are sold. The additional wording tagged on to the Complainant’s trademark within the Disputed Domain Name does not add any distinguishing characteristic and does not prevent a finding that the Disputed Domain Name is confusingly similar to the FRONTLINE mark in which the Complainant has rights.

Similarly, the gTLD extension <.com> does not prevent a finding of confusing similarity as the circumstances of this proceeding, it would be considered to be a necessary technical requirement for a domain name registration,

This Panel finds therefore that the disputed domain name is confusingly similar to the FRONTLINE mark in which Complainant has

rights, and Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

### **Rights and Legitimate Interests**

The Complainant has made out a *prima facie* case that the Respondent has no rights legitimate interests in the Disputed Domain Name arguing that

- the Respondent is not commonly known by the Disputed Domain Name and is not identified by the Disputed Domain Name in the Whois database;
- the Respondent is neither affiliated with nor authorized by the Complainant in any way;
- the Respondent does not engage in any activity for the Complainant, nor does the Complainant carry out any business with the Respondent;
- the Complainant asserts that it has granted neither license nor authorization to the Respondent to make any use of the Complainant's trademark FRONTLINE, nor to apply for registration of the Disputed Domain Name;
- the screen capture of the webpage to which the Disputed Domain Name resolves which has been exhibited in an annex to the Complaint shows that the Respondent is using the Disputed Domain Name to resolve to a registrar's parking page with commercial links which does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use for the purposes of the Policy.

It is well established that once a complainant makes out a *prima facie* case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant has therefore succeeded in the second element of the test in Policy Paragraph 4(a)(ii).

### **Bad Faith**

The Complainant has adduced clear and convincing, uncontested evidence that it has registered trademark rights in the FRONTLINE mark dating back to its earliest registration of the mark on June 9, 1994 which long predates the registration and first use of the Disputed Domain Name < frontlineplusfordogsfleas.com> which was registered on October 27, 2023.

Furthermore the Disputed Domain Name was registered long after the Complainant registered and used the < frontline.com> domain name on January 28, 1999.

FRONTLINE is a distinctive mark, and it is most probable that the Disputed Domain Name which is composed of the mark in combination with the phrase "plus for dogs fleas" was chosen for any reason other than its similarity to the Complainant's mark. The Disputed Domain Name is a clear reference to the Complainant's animal hygiene products which are sold under the FRONTLINE mark.

This Panel finds therefore that on the balance of probabilities the disputed domain name was registered in bad faith with the Complainant and its mark in mind to take predatory advantage of the Complainant's goodwill and reputation in the FRONTLINE mark.

The Complainant's uncontested submission that Respondent is using the disputed domain name to attract Internet traffic intended for Complainant, and divert it to parking page with pay-per-click links is supported by the evidence. Such use of the disputed domain name in which the Complainant's mark is the initial, dominant and only distinguishing element constitutes bad faith for the purpose of the Policy.

Furthermore, it is of concern that the Respondent has used the Disputed Domain Name to create a mail exchange ("MX") record which on the balance of probabilities is preparatory to creating an email account.

This Panel finds therefore that by using the Disputed Domain name in this manner, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's parking page by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on your web site or location.

As this Panel has found that the Disputed Domain Name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **frontlineplusfordogsfleas.com**: Transferred

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**PANELLISTS**

Name **James Bridgeman**

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DATE OF PANEL DECISION 2023-12-05

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Publish the Decision

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