Decision for dispute CAC-UDRP-106911

Case number	CAC-UDRP-106911
Time of filing	2024-10-01 15:05:46
Domain names	flowbirdgrp.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	FLOWBIRD

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	flowbird-group

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 has demonstrated ownership of rights in the trademark FLOWBIRD for the purposes of standing to file a UDRP Complaint.

In particular, the Complainant is the owner of trademark registrations for FLOWBIRD, including the following:

- French trademark registration No. 4425718 for FLOWBIRD, registered on February 05, 2018;

- French trademark registration No. 4449643 for FLOWBIRD (word/device), registered on April 27, 2018; and

- International trademark registration No. 1454019 for FLOWBIRD, registered on July 13, 2018.

The Complainant also refers to ownership over the following domain names that incorporate its FLOWBIRD trademark: <flowbird.group>, registered on February 27, 2018 and <flowbird.fr>, registered on 27, 2018.

FACTUAL BACKGROUND

The Complainant is a company specializing in payment and ticketing systems for car parks and public transport. Its headquarters

are in France and it operates internationally.

The disputed domain name was registered on September 01, 2024 and it currently resolves to a parking page.

PARTIES CONTENTIONS

The Complainant

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. In particular, the Complainant argues that the disputed domain name is confusingly similar to its FLOWBIRD trademark as this trademark is contained in its entirety within the disputed domain name. Further, the Complainant contends that the addition of letters “GRP” is not sufficient to avoid the likelihood of confusion and that ".com" TLD is viewed as a standard registration requirement and as such is disregarded.

Regarding the second UDRP element, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant 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, or apply for registration of the disputed domain name by the Complainant. The Respondent is also not commonly known by the disputed domain name.

With respect to the third UDRP element, the Complainant holds that the fact that the Respondent has registered a domain name that is confusingly similar to its FLOWBIRD trademark indicates that the Respondent registered the disputed domain name with full knowledge of the Complainant’s trademark. Additionally, the Complainant indicates that a Google search on the expression “flowbird grp” displays results related to the Complainant. The disputed domain name resolves to a parking page and the Complainant holds that a failure to make active use of a disputed domain name is evidence of bad faith under Policy. Furthermore, The Complainant contends that the domain name was used intentionally in order to attempt to attract Internet users to a respondent’s website or online location by creating a likelihood of confusion or a false association with a complainant’s mark as to the source, sponsorship, affiliation or endorsement of the registrant’s website or online location demonstrates registration and use in bad faith.

The 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

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents

submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy stipulates that the complainant must prove each of the following:

1. that the disputed domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
2. that the respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name, as stipulated in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0").

The Complainant has shown rights in respect of the FLOWBIRD trademark for the purposes of the Policy (WIPO Overview 3.0, section 1.2.1).

The entirety of the Complainant's trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy (WIPO Overview 3.0, section 1.7).

Although the addition of other terms, here "grp", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark for the purposes of the Policy (WIPO Overview 3.0, section 1.8).

In addition, it is well established that ".com", as a generic Top-Level Domain, can be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant's trademark (WIPO Overview 3.0, section 1.11.1).

The Panel, therefore, finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, the Panel notes that there appears to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's FLOWBIRD trademark. There appears to be no element from which the Panel could infer the Respondent's rights and legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the structure of the disputed domain name, which contains the Complainant's FLOWBIRD trademark in combination with the word "grp" (which is likely an abbreviation for "group"), carries a high risk of implied affiliation (see WIPO Overview 3.0, section 2.5.1). This additional word closely corresponds to the Complainant who uses domain name <flowbird.group> for its principle website. Furthermore, as demonstrated by the Complainant, Google search for the term "flowbird grp" demonstrates results exclusively related to the Complainant (with correction that the user might have wanted to search for "flowbird group"), which additionally emphasizes a high risk of implied affiliation.

Having in mind the above, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a

domain name is in bad faith (WIPO Overview 3.0, section 3.2.1).

In the present case, the Panel notes that the Respondent must have been aware of the Complainant and its FLOWBIRD trademark, especially having in mind the distinctiveness of the Complainant's trademark. The Complainant's FLOWBIRD trademark consists of two common and dictionary English words "flow" and "bird", but these words combine together create a unique and distinctive new word that appears to be exclusively used by the Complainant. As indicated by a former panel "While the separate words are common in the English language they are, as the Panel has noted, uncommon when joined. FLOWBIRD is inherently distinctive in which the joined words are unmistakably one of a kind." (FLOWBIRD SAS (PARKEON) v. Christoffer Blixoe, CAC Case No. CAC-UDRP-103591). It is, therefore, highly unlikely that the Respondent decided to register a domain name containing this trademark in its entirety without having the Complainant in mind when doing so. Also, the choice of additional word "grp" (which is likely an abbreviation for "group", that can be understood as the reference to the Complainant who uses domain name <flowbird.group> for its principle website) further indicates that the Respondent was well-aware of the Complainant and its activities and had the Complainant and its FLOWBIRD trademark in mind when registering the disputed domain name. Additionally, a mere Google search for the term "flowbird grp" shows the results which are exclusively related to the Complaint, indicating that the user has probably made a typo and might have wanted to search for "flowbird group" (the Panel also notes that results related to Complainant are again displayed even if the user opts for "search for flowbird grp instead"). In the Panel's view, this is additional evidence that the Respondent had the Complainant in mind when registering the disputed domain name.

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

The disputed domain name currently resolves to a parking page, meaning that the disputed domain has not been actively used by the Respondent. Nevertheless, the Panel holds that the particular circumstances of this case would lead to establishment of the bad faith on the Respondent's side under the doctrine of passive holding. Previous panels have already considered that passive holding of a disputed domain name can satisfy the requirements of paragraph 4(a)(iii) of the Policy, and that in such cases the panel must give close attention to all the circumstances of Respondents' behavior (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). The principles established in Telstra Corporation Limited v. Nuclear Marshmallows, had been widely adopted by UDRP panels and have found its place in WIPO Overview 3.0. In accordance with Section 3.3. of WIPO overview 3.0, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. It should be emphasized that it is not required that all the above-listed factors be present in order to establish bad faith use of the disputed domain name (see, for example, Compagnie Générale des Etablissements Michelin v. K Nandalal, BlueHost, WIPO Case No. D2021-3990).

As indicated above, the Complainant's FLOWBIRD trademark is highly distinctive as it is formed from the unusual combination of two common English words and such unique structure appears to be exclusively used by the Complainant. Furthermore, the Respondent has failed to provide its response and thereby to provide any explanation for the choice of the disputed domain name and its planned use. In the Panel's opinion, the distinctiveness of the Complainant's FLOWBIRD trademark and the structure of the disputed domain name (that clearly indicates targeting of the Complainant) are such that it is rather difficult to imagine any good faith use that the disputed domain name could be put into. For that reason, the Panel finds that the disputed domain name has been used in bad faith in accordance with the doctrine of passive holding.

The Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently that the Complainant has established the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **flowbirdgrp.com**: Transferred

PANELLISTS

Name	**Stefan Bojovic**

DATE OF PANEL DECISION 2024-11-12

Publish the Decision