

## **ADMINISTRATIVE PANEL DECISION**

Flotation Energy Limited v. Shang Mian Hen Fei Shi Jian  
Case No. D2023-1186

### **1. The Parties**

The Complainant is Flotation Energy Limited, United Kingdom, represented by CMS Cameron McKenna Nabarro Olswang LLP, United Kingdom.

The Respondent is Shang Mian Hen Fei Shi Jian, China.

### **2. The Domain Name and Registrar**

The disputed domain name <flotationenergy.org> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 22, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 25, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 4, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant was founded in 2018. It designs, develops and operates, or assists in operating, offshore wind farms including both fixed platforms and floating platforms.

The Complainant promotes its services and projects from a website at "<https://www.flotationenergy.com>".

Its first project was the Kincardine Offshore Windfarm, 15 km of the coast of Aberdeen in Scotland. According to the Complainant, it was then and remains today the world's largest floating wind project.

The Complainant now has projects around the world including the United Kingdom, Ireland, Australia, Taiwan and Japan. For the 2022 financial year, the Complainant's activities generated GBP two million in revenues.

On November 23, 2021, the Complainant announced that it had won AUD 2.3 million from the Energy Innovation Fund operated by the Victorian State Government in Australia towards development of the Complainant's 1.5GW Seadragon offshore windfarm for the supply of clean energy to one million business and residential customers. According to the Complaint a further USD 4.3 million investment was announced the following year.

On December 3, 2021, the Complainant announced the formation of a joint venture with Mitsui OSK Lines in Japan to explore opportunities to develop offshore wind generation projects over and above the Complainant's existing 2GW Japanese portfolio.

On August 16, 2022, the Complainant announced the visit of the United Kingdom's Minister of Scotland to the Port of Aberdeen in connection with the investment of GBP 100 million in Northeast Scotland for projects directed to accelerating offshore wind power development.

On September 20, 2022, the Complainant announced the formation of a partnership with Vågrønn, of Norway, to develop offshore windfarms in the North Sea.

On November 2, 2022, the Complainant announced that it was "partnering" with Tokyo Electric Power Company (TEPC), Japan's largest electricity company. Through this, TEPC acquired through a subsidiary all of the issued shares in the Complainant. The Complainant continues to operate under its name and trademark, "Flotation Energy".

The disputed domain name was registered on November 18, 2022.

It resolves to a website.

The website has a different "get-up" to the Complainant's website – a green theme rather than light blue – and a different "logo". The Respondent's website, however, proclaims it is the website of "Flotation Energy", features the Complainant's company registration number issued by the United Kingdom regulatory authorities and reproduces much of the text from the Complainant's website including the text from the

History section, the Project Development and Partnering section, the Engineering and Project Management section, the Technology section and the Environmental Impact and Consent section. Apart from the Project Development and Partnering section, the text of the reproduced sections is identical or almost identical. The text in the Project Development and Partnering section is in a kind of halting, ungrammatical English but appears recognisably based on the corresponding text on the Complainant's website.

The Respondent's website also includes a page headed "What are the prizes of roulette", somewhat incongruously in the context of the other pages. Another part of the website solicits investments from the public. It states that "Under the joint supervision of the Global Wind Power Association, every investment of yours will be guaranteed without any risk". It invites prospective investors to find out more details about the operator of the website by entering the Complainant's company number into the United Kingdom's companies regulator's information service.

The Complaint includes some emails from members of the public complaining about the Respondent's website including one email in which the author claims to have been defrauded of moneys paid into one of the investment programs offered through the website.

## **5. Discussion and Findings**

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has not claimed to own any registered trademarks. Instead, it has provided evidence of significant revenues in the financial year immediately preceding registration of the disputed domain name. As noted above, it has also announced a number of very significant projects and partnerships in at least the year preceding registration of the disputed domain name as well as developing and commencing operation of what is still the world's largest offshore wind farm in 2018.

It is well-established under the Policy that rights in an unregistered trademark can be established as a result of the inchoate rights arising through activities such as announcements of mergers and new products. See e.g. *The Chase Manhattan Corporation and Robert Fleming Holdings Limited v. Paul Jones*, WIPO Case No. [D2000-0731](#); and *Clifford Chance LLP And Pünder GmbH v. CPIC Inc.*, WIPO Case No. [D2000-1603](#). The present case provides an even stronger basis in some respects given what appears to be the Complainant's market leading position, the evidence of substantial revenues and the announcements of very significant projects. Accordingly, the Panel finds that the Complainant has provided sufficient evidence of recognition of its name in its field to have rights in FLOTATION ENERGY as an unregistered trademark for the purposes of the Policy.

To the extent there is any doubt about that, the Respondent's website is plainly premised on members of the public recognizing "Flotation Energy" as the name and trademark of a substantial and reputable business. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.15.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".org" gTLD, therefore, the disputed domain name is identical to the Complainant's trademark.

Accordingly, the Panel finds that the requirement under the first limb of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or 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; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name four years after the Complainant began using its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent has not disputed any of these matters.

In these circumstances, the use of the disputed domain name for a website which impersonates the Complainant's website and misrepresents itself as the website of the Complainant does not constitute the offering of goods or services in good faith for the purposes of paragraph 4(c)(i) of the Policy. Nor does it qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

On the contrary, the use of the disputed domain name in connection with what appears to be a scheme to defraud members of the public cannot confer rights or legitimate interests under the Policy. See e.g. [WIPO Overview 3.0](#), section 2.13.

The Panel considers it appropriate to accept that is what the disputed domain name is being used for in this case. It is not just a case of mere assertion. The website itself purports to offer investors a full guarantee with no risk and uses the Complainant's company registration number falsely to reassure the public that they are dealing with a reputable business known by the Complainant's trademark. The Complaint also includes evidence from at least one member of the public who appears to have been defrauded.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds established the second requirement under the Policy also.

### **C. Registered and Used in Bad Faith**

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

In the present case, there can be little doubt that the Respondent was aware of the Complainant and its trademark when the Respondent registered the disputed domain name. In addition to using the Complainant's name and trademark, the contents of the website and the use of the Complainant's company registration number demonstrate clear knowledge.

As the website has appeared within a short time of the registration of the disputed domain name, the Panel readily infers that the Respondent registered the disputed domain name to use it for the purposes to which it

has been put – impersonating the Complainant and apparently seeking to attract “investments” from people mistakenly thinking they are dealing with the Complainant.

Registering the disputed domain name for that purpose, or purposes of that kind, is a clear case of registration in bad faith. Using the disputed domain name in the way it is being used is also use in bad faith under the Policy.

Accordingly, the established all three requirements under the Policy.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <flotationenergy.org>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: May 18, 2023