

## **ADMINISTRATIVE PANEL DECISION**

Pink Floyd (1987) Limited v. Domain Admin  
Case No. D2023-1386

### **1. The Parties**

The Complainant is Pink Floyd (1987) Limited, United Kingdom, represented by Boulton Wade Tennant, United Kingdom.

The Respondent is Domain Admin, United States of America (“United States”).

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

The disputed domain name <pinkfloydstore.com> is registered with DropCatch.com LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on May 2, 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 is an English rock band which was formed in 1965. In 1996, it was inducted into the United States Rock & Roll Hall of Fame. Since its formation, the Band has released and sold numerous records, studio albums, live albums and singles (to date estimated in over 250 million albums sold worldwide). The Complainant has also carried out extensive merchandising of various products associated with the Complainant and its albums.

The Complainant owns numerous registrations for the PINK FLOYD trademark, including, but not limited to:

- United Kingdom trademark Registration No. 2066619, registered on October 18, 1996;
- United States trademark Registration No. 2194702, registered on October 13, 1998;
- United States trademark Registration No. 5521572, registered on July 24, 2018;
- United States trademark Registration No. 6862397, registered on October 4, 2022 (hereinafter collectively referred to as the "PINK FLOYD Mark").

The Complainant also owns numerous domain names containing or incorporating the PINK FLOYD Mark, including <pinkfloyd.com>, which resolves to the Complainant's official website at "www.pinkfloyd.com".

The Disputed Domain Name was registered on November 23, 2022 and it resolves to a pay-per-click website (PPC).

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits and contends that:

- The Complainant is well known and recognizable, enjoying a significant reputation worldwide. The Complainant is the owner of all registered trademark rights relating to the PINK FLOYD Mark.
- The disputed domain name is confusingly similar to the Complainant's PINK FLOYD Mark. In this regard, the Complainant notes that the disputed domain name entirely incorporates the PINK FLOYD Mark. The addition of the term "store" carries the connotation of merchandising activity, which is a key part of the Complainant's business.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent (i) is not affiliated with the Complainant, (ii) has not been authorized or somehow given consent by the Complainant to register any domain name incorporating such trademark, (iii) although the Respondent's identity is masked, the Complainant does not believe that the Respondent is commonly known as PINK FLOYD STORE.
- The disputed domain name resolves to a PPC website and this does not constitute fair use of the disputed domain name.
- The disputed domain name was registered in bad faith. The Complainant is well known worldwide and has established rights for many decades. A simple search on the Internet would have revealed the Complainant's presence and reputation. Therefore, the Respondent was aware of and targeted the Complainant's trademark when it registered the disputed domain name.
- The disputed domain name is also used in bad faith. The disputed domain name resolves to a PPC website. In this regard, the Complainant relies on previous UDRP decisions that established that third party generated material "automatically" appearing on the website associated with a domain name may form a basis for finding bad faith.

Based on the above, the Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove 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;
- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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

The Panel finds that the Complainant has established rights over the PINK FLOYD Mark based on the evidence submitted in the Complaint.

The disputed domain name consists of the Complainant's PINK FLOYD Mark with addition of the term "store", followed by the generic Top-Level Domain ("gTLD") ".com".

The addition of the generic gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - "[WIPO Overview 3.0](#)").

Therefore, the relevant comparison to be made is with the second-level portion of the disputed domain name, *i.e.*, "pinkfloydstore". As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. The disputed domain name entirely incorporates the Complainant's PINK FLOYD Mark and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that disputed domain name is confusingly similar to a mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, based on the following: (a) the Complainant holds prior rights in the globally registered and well known PINK FLOYD Mark, (b) the Respondent has not been authorized to use the Complainant's trademark in any way, and is not commonly known by the disputed domain name, (c) the disputed domain names resolve to a pay-per-click website and this does not amount to fair use of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while 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 often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that 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 submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its PINK FLOYD Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the disputed domain name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The Panel also finds that given that the disputed domain name is composed of the Complainant's distinctive trademark, along with the descriptive addition of the term "store", the composition of the disputed domain name carries a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

Based on the above, the Panel concludes that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

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

### C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith.

The PINK FLOUD Mark is distinctive and well known and the date of its first registration significantly precedes the date of registration of the disputed domain name. It is therefore highly likely that the Respondent had knowledge of the Complainant's mark when registering the disputed domain name. This suggests that the disputed domain name was registered by the Respondent in bad faith (see [WIPO Overview 3.0](#), section 3.2.2) and in full knowledge that the disputed domain name would be confusingly similar to the Complainant's trademark. In this regard, UDRP panels have found that the registration of a disputed domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.

According to the Complainant's uncontested submissions, at the time of filing the Complaint the disputed domain name resolved to a PPC website. The Panel accessed the website at the disputed domain name on May 15, 2023 and there was a web page displaying a text stating: "This domain is available for sale!"

Each of the two instances above indicates bad faith for the Policy purpose.

UDRP panels have found that the use of a domain name to operate a pay-per-click site may be considered evidence of bad faith, when such use is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant (see *TTT Moneycorp Limited v. Guiying Huang*, WIPO Case No. [D2016-20130](#); *Credit Industriel et Commercial S.A. v. Richard J.*, WIPO Case No. [D2005-0569](#); *Société Air France v. Bing G Glu*, WIPO Case No. [D2006-0834](#); *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#)). Given the confusing similarity between the disputed domain name and the Complainant's PINK FLOYD Mark, the use of the disputed domain name in connection with a pay-per-click site falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of those websites.

The fact that the disputed domain name does not currently resolve to an active website and merely points to a web page offering the domain name for sale, does not affect the above conclusions. It is an established principle that the lack of active use of a domain name does not as such prevent a finding of bad faith (see *Vertu Corporation Limited v. David Szn and Jun Luo*, WIPO Case No. [D2015-0185](#); *Accor, So Luxury HMC v. Youness Itsmail*, WIPO Case No. [D2015-0287](#); *McGrigors LLP v. Fraser Coutts*, WIPO Case No. [DCO2011-0022](#); see also [WIPO Overview 3.0](#), section 3.3).

As stressed by many previous UDRP decisions, the Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith and in the Panel's view the circumstances of the present case (namely: reputation and distinctiveness of the Complainant's trademark, no response to the Complaint, impossibility of conceiving a good faith use of the disputed domain name) clearly show the Respondent's bad faith.

Based on the above considerations, the Panel concludes in these circumstances that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied.

## 7. 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, <pinkfloydstore.com> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: May 15, 2023