

## **ADMINISTRATIVE PANEL DECISION**

Flunch v. 王先生 (wang xian sheng)  
Case No. D2022-0066

### **1. The Parties**

The Complainant is Flunch, France, represented by AARPI Scan Avocats, France.

The Respondent is 王先生 (wang xian sheng), China.

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

The disputed domain name <flunchinvite.com> is registered with Hongkong Domain Name Information Management Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2022, 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.

On February 7, 2022, the Center also transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese, and the proceedings commenced on February 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 7, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 16, 2022. 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 operates the Flunch restaurant chain, which was created in 1971. There are approximately 200 Flunch restaurants in France and abroad. The Complainant owns multiple trademark registrations, including the following, both for FLUNCH:

- French trademark registration number 1617318, registered on September 26, 1990, specifying goods and services in classes 29, 30, 35, 40, 42, 43, 44 and 45; and
- European Union trademark registration number 010401792, registered on March 21, 2012, specifying goods and services in classes 29, 30 and 43.

The above trademark registrations remain current. The Complainant has registered multiple domain names that incorporate “flunch”, including <flunch.fr>, registered on May 28, 1997, that it uses in connection with a website where it promotes the Flunch restaurant chain. The Complainant conducted a promotion under the name “Flunch Invite” from 2012, which offered customers a discount when they invited a guest, and it used the domain name <flunchinvite.com> in connection with a website that provided information about that promotion. According to the evidence, the registration of that domain name was due to expire on August 10, 2021, after which the Complainant ceased to be the registrant.

The Respondent is an individual ostensibly resident in China. He is identified in the Registrar’s Whois database as “王先生 (wang xian sheng)”, which means “Mr. Wang”.

The disputed domain name was registered on October 30, 2021. At the time when the Complaint was filed, it resolved to a website in Chinese displaying advertising for gambling and pornography websites. At the time of this Decision, it no longer resolves to any active website; rather, it is passively held.

#### **5. Parties’ Contentions**

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

The disputed domain name is confusingly similar to the Complainant’s FLUNCH trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has never been known by the disputed domain name. The Respondent is not in any way related to the Complainant’s business. The Complainant has never licensed, authorized or otherwise permitted the Respondent to register a domain name incorporating its trademarks.

The disputed domain name was registered and is being used in bad faith. It is highly unlikely that the Respondent ignored the existence of the Complainant and its trademarks. The Complainant has actively used its FLUNCH trademarks in France and abroad since the 1970s. The Complainant previously used a domain name identical to the disputed domain name to conduct a promotional operation. The Respondent uses the disputed domain name in connection with a pornographic website.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin characters, it refers directly to the Complainant’s trademarks and it contains an English word, all of which indicates that the Respondent can speak English whereas the Complainant cannot understand Chinese.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint was filed in English. Despite the Center having sent an email regarding the language of the proceeding, and written notification of the Complaint, in both Chinese and English, the Respondent has not commented on the language of the proceeding or expressed any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### 6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the FLUNCH trademark.

The disputed domain name wholly incorporates the FLUNCH trademark as its initial element. It also incorporates the English word “invite”. Given that the FLUNCH trademark remains clearly recognizable within the disputed domain name, this word does not avoid a finding of confusing similarity between the disputed domain name and the Complainant’s trademark. See WIPO Overview of WIPO Panel Views on

Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The only other element in the disputed domain name is a generic Top-Level Domain ("gTLD") suffix (".com"). As a technical requirement of registration, the gTLD suffix may be disregarded in the comparison between the disputed domain name and the Complainant's trademark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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.

As regards the first and third circumstances set out above, the disputed domain name formerly resolved to a website displaying advertising for gambling and pornography websites. Nothing on the website had any apparent connection to the disputed domain name. This use was for the commercial gain of the Respondent, if he was paid to direct traffic to the advertised websites, or for the commercial gain of the operators of those websites, or both. The Complainant declares that the Respondent is not in any way related to the Complainant's business and that the Complainant has never licensed, authorized or otherwise permitted the Respondent to register a domain name incorporating its trademarks. At the present time, the disputed domain name is passively held. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor that he is making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar's Whois database as "王先生 (wang xian sheng)", meaning "Mr. Wang", which appears to be an alias. There is no evidence that the Respondent has been commonly known by the disputed domain name.

The Panel takes note that the Complainant previously held the domain name <flunchinvite.com> and that its registration of that domain name evidently expired in the months before the Respondent registered it as the disputed domain name. Regardless of whether the expiry of the Complainant's registration was intentional, the Panel does not consider that that constituted an implied consent or licence for the Respondent to incorporate the Complainant's FLUNCH trademark in the disputed domain name or any other domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

“(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.”

The disputed domain name was registered on October 30, 2021, years after the registration of the Complainant’s FLUNCH trademark. The Complainant has made longstanding use of the FLUNCH trademark. The disputed domain name wholly incorporates that trademark, which is not a dictionary word. Further, it combines the mark with the word “invite”, so that the disputed domain name is identical to a domain name formerly used by the Complainant in connection with a website for a promotional operation. This is unlikely to have been coincidental. The Respondent provides no other explanation for his registration of the disputed domain name. In these circumstances, the Panel considers it more likely than not that the Respondent was aware of the Complainant and its FLUNCH trademark when he registered the disputed domain name.

The disputed domain name formerly resolved to a website displaying advertising for gambling and pornography websites. Given the findings in Section 6.2B above, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website or of the services advertised on that website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has changed since the Complaint was filed and that it no longer resolves to any active website. This change in use does not alter the Panel’s conclusion and may constitute a further indication of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

### 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 <flunchinvite.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: March 21, 2022