

ADMINISTRATIVE PANEL DECISION

Fleury S.A. v. Registration Private, Domains By Proxy, LLC / Power Click
Case No. D2022-2120

1. The Parties

The Complainant is Fleury S.A., Brazil, represented by Di Blasi, Parente & Advogados Associados, Brazil.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / Power Click, United States.

2. The Domain Name and Registrar

The disputed domain name <grupofleury.com> 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 June 10, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 2022 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 June 21, 2022.

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 June 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on July 26, 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 is Fleury S.A., a Brazilian institution of the Fleury Group, a medical and health organization operating in Brazil. The Fleury Group is an institution that has built a history of work in the health and medical industry since it was founded in 1926 by Mr. Gastão Fleury Silveira, when started its activities as a clinical analysis laboratory, with the differential of excellence in services and attention to the client and the medical community. Over the years, the Fleury Group has expanded the range of services it offers, becoming the first multidisciplinary clinical analysis laboratory and later incorporating diagnostic imaging tests and exams in all areas of medical specialties.

The Complainant is currently the owner of more than 200 trademark registrations before the Brazilian Patent and Trademark Office – BPTO, including GRUPO FLEURY registration n. 829885064 for class 36, registered in January 3, 2012; the registration n. 829885048 for class 42, registered in September 13, 2016; and the registration n. 829885013 for class 44, registered in September 13, 2016. The complainant is also the owner of the domain name <grupofleury.com.br>.

The disputed domain name was registered on January 8, 2020 and resolves to a website containing pay per click ads.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name <grupofleury.com> is identical to the GRUPO FLEURY trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

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 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(i) the 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 such domain name; and

(iii) the 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 or confusingly similar to the Complainant's trademark.

The Complainant holds several valid GRUPO FLEURY trademark registrations, which precede the registration of the disputed domain name.

The disputed domain name <grupofleury.com> is identical to the Complainant's trademarks since it merely reproduces the GRUPO FLEURY trademark in its entirety. As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

As explained in the Complaint, the Complainant is one of the biggest medical and health organizations in Brazil. The term “Grupo Fleury” does not have any additional meaning, except to identify the Complainant. Thus, it is the view of the Panel that the Respondent was aware of the Complainant and its trademark when it registered the disputed domain name.

The Panel visited the disputed domain name and was able to verify that it resolves to a website containing pay per click ads. The Panel is of the view that by using the disputed domain name as described above 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 that website. In accordance with paragraph 4(b)(iv) of the Policy, this shall be evidence of both the registration and use in bad faith of the disputed domain name for the purposes as set out in paragraph 4(a)(iii) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <grupofleury.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date August 3, 2022