

ADMINISTRATIVE PANEL DECISION

Fly Go Voyager SRL v. Clive Marshall
Case No. D2022-2162

1. The Parties

The Complainant is Fly Go Voyager SRL, Romania, represented by Suciu & Asociații, Romania.

The Respondent is Clive Marshall, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <flygo.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 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 for the disputed domain name.

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 June 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2022. The Response was filed with the Center on June 23, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on July 13, 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 a limited liability company headquartered in Romania, established in 2005, and providing services in the field of travel agencies, offering flight, city break, cars, and hotels booking services.

The Complainant has provided evidence of ownership of trademarks consisting of, or comprising FLY GO, including the following:

- Romania trademark registration No. 146670 for FLY GO (word mark), registered on July 19, 2016, in classes 35, 39, 41, and 42;
- European Union Trade Mark No. 014258371 for FLY GO (figurative mark), filed on June 15, 2015, and registered on October 21, 2015, in classes 39 and 43;
- United Kingdom trademark No. UK00914258371 for FLY GO (figurative mark), filed on June 15, 2015, and registered on October 21, 2015, in classes 39 and 43.

The Complainant operates a website at the domain name <fly-go.ro>, registered on March 4, 2009, where it provides booking services of airline tickets, hotels, and cars under the trademark FLY GO.

The disputed domain name <flygo.com> was registered on May 3, 1999, and is pointed to a website currently offering on sale the disputed domain name for USD 19,995.

5. Parties' Contentions

A. Complainant

The Complainant indicates to have been operating in the field of tourist agencies for more than 15 years.

The Complainant contends that the disputed domain name is identical to the trademark FLY GO in which it claims rights based on the trademark registrations cited in section 4 above.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent does not own any trademark rights for FLY GO and that, considering the disputed domain name is being offered for sale, there is no evidence that the Respondent is using the disputed domain name to provide any goods or services to the public.

The Complainant also asserts that there appears to be no legitimate business of the Respondent that would be known under the name "flygo" nor there seem be any grounds to believe the Respondent is known by the disputed domain name. The Complainant further claims that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name since it is being listed for sale.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent registered the disputed domain name with the sole purpose of selling it in order to make a profit.

The Complainant emphasizes that the disputed domain name is not used in connection with the activity of the Respondent and the Respondent's website makes no reference to any activity carried out by the Respondent under the name "flygo". The Complainant further states that the details of the Respondent do not associate the Respondent in any way with the disputed domain name.

B. Respondent

The Respondent states that the disputed domain name was registered on May 3, 1999, and has since been used by him as an Expedia affiliate. The Respondent points out that the Complainant stated to have traded for 15 years, although no proof of this has been supplied, and highlights that 15 years would make the start date of the Complaint as about 2007, which is a minimum of 7 years after the registration of the disputed domain name.

The Respondent also underlines that the domain name <fly-go.ro>, at which the Complainant operates its website, was registered 10 years after the registration of the disputed domain name.

The Respondent further claims that, as it has used the disputed domain name, the disputed domain name is active and there can be no justification for the Complainant in claiming cybersquatting activities.

The Respondent asserts that the Complainant's intention was solely to obtain the disputed domain name by putting pressure to release it for its future use and highlights that, should the Complainant wish to acquire the disputed domain name, the Respondent would consider the offer.

6. Discussion and Findings

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 directs that the Complainant must prove each of the following:

- (i) 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;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark FLY GO based on the trademark registrations cited under section 4 above and the related trademark certificate submitted as annexes to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain names to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

In the case at hand, the Complainant's trademark FLY GO is entirely reproduced in the disputed domain name, with the mere deletion of the space between the two words "fly" and "go" encompassed in the trademark and the addition of the Top-Level Domain ".com", which is commonly disregarded under the first element confusing similarity test (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is identical to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In light of the Panel's findings as to the registration and use in bad faith, it is not necessary to address the issue of whether the Respondent has rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that the Complainant has failed to demonstrate that the disputed domain name was indeed registered and used by the Respondent in bad faith for the following reasons.

As stated in section 3.8 of [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent.

The evidence on records shows that the disputed domain name was registered in 1999, *i.e.* several years before the Complainant was founded – in 2005 – and first entered into business according to the Complainant's assertions – *i.e.* 15 years ago. In addition, the Complainant's trademark registrations for FLY GO on which the Complainant relies were filed only as of June 2015, and the domain name <fly-go.ro> used by the Complainant for its main website was registered in 2009.

Therefore, the Respondent could not have possibly been aware of the Complainant and its trademarks at the time of the registration of the disputed domain name.

The Panel also finds that there is no element in this case that demonstrates that the Respondent, on balance of probabilities, intended to target the Complainant and its trademark through the use of the disputed domain name, which is pointed to a website where no reference is made to the Complainant.

In view of the above, the Panel finds that the Complainant has failed to demonstrate that the Respondent registered and used the disputed domain name in bad faith.

As the Complainant is represented by counsel and knew the registration date when filing the Complaint and did not allege a later acquisition by the Respondent, the Panel considers that a finding of RDNH is appropriate.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: July 27, 2022