

## **ADMINISTRATIVE PANEL DECISION**

F5, Inc., f/k/a F5 Networks, Inc. v. Cloud F5 Pty Ltd. / eric yun  
Case No. D2022-2529

### **1. The Parties**

The Complainant is F5, Inc., f/k/a F5 Networks, Inc., United States of America, represented by Azora Law, United States of America.

The Respondent is Cloud F5 Pty Ltd., Australia / eric yun, Australia.

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

The disputed domain name <cloudf5.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 July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 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 July 18, 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 amendment to the Complaint on July 18, 2022.

The Center verified that the Complaint together with the amendment to 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 July 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on August 22, 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 in the business of providing various computer services, including for example software services, application management services, computer networking and technology services, cloud computing services, network security services, and services related to servers, networks, systems, and computers.

The Complainant has a number of trademarks or service marks (hereafter, "trademarks") for or incorporating F5, of which the following are representative for the purposes of this proceeding:

F5, Australian trademark, filed July 26, 2021, registered July 16, 2014, registration number 1504753, in classes 9 and 42;

F5, United States Patent and Trademark Office (USPTO) trademark, principal register, registered February 6, 2001, registration number 2427084, in classes 9 and 42;

F5 and design, USPTO trademark, principal register, registered September 9, 1997, registration number 2094918, in class 9;

F5 NETWORKS, USPTO trademark, principal register, registered October 31, 2000, registration number 2399278, in classes 9 and 42.

No background information is available about the Respondent except for the contact information provided to the Registrar in order to register the disputed domain name on July 18, 2020. The disputed domain name has resolved to a website (the "Respondent's website") advertising various computer services.

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant says its F5 trademark protects its rights over confusingly similar marks that contain the trademark, including the disputed domain name.

The Complainant says the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not known to the Complainant and is not authorised to use the Complainant's trademarks. Offers of services made by the Respondent through the website of the disputed domain name are made without any right to do so and are made with intent to divert customers fraudulently by confusion with the Complainant's trademark. The Respondent is not making a fair or legitimate use of the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith. The Respondent has used the disputed domain name containing the Complainant's trademark with intent to supply services similar to those offered by the Complainant by confusion with Complainant's trademark. The Respondent is attempting to generate business through the goodwill associated with the Complainant's trademark.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

“(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

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

The Panel has perused the trademark registration evidence produced by the Complainant and is satisfied that the Complainant has the requisite rights under the Policy in those trademarks.

The disputed domain name may be read as “cloud”, being a word that has become associated with certain computer services, and “f5”, which is identical to the Complainant's trademark F5. Typographical case is of no consequence in domain names, although in fact the Complainant's trademark in its registered logo form incorporates a lower case “f”.

Insofar as the disputed domain name contains the Complainant's trademark, and the preceding descriptive word “cloud” in this instance does not prevent a finding of confusing similarity, the disputed domain name is found to be confusingly similar to the Complainant's trademark under the Policy. The generic Top-Level-Domain (“gTLD”) “.com” need not be taken into account. Accordingly the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

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

The Complainant has stated that *prima facie* the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not know the Respondent and has not authorised it to use the Complainant's trademark.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in the disputed domain name by demonstrating, without limitation:

“(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.”

The Respondent is evidently making use of the disputed domain name for a website through which goods or services are offered, but this cannot be considered a *bona fide* offering since it makes unauthorised use of the Complainant’s trademark.

According to the information provided by the Registrar concerning the registrant of the disputed domain name, the registrant’s name is “eric yun”, with no organization name being displayed as per the Registrar’s Whois database. The webpage at the disputed domain name displayed a copyright notice with the name “Cloud F5 Pty Ltd.”. There is no evidence of the existence of such entity, or if it is operating under such name. Regardless of whether the Respondent registered that as a corporate name, there is no evidence that any other party knows the Respondent by that name, and the Panel notes that the Complainant provides software services connected to cloud computing under the F5 trademark.

Therefore, there is no evidence the Respondent has previously been commonly known by the disputed domain name, and its use is evidently not noncommercial or fair. The Respondent has not responded with any evidence or submission to the contrary.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

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

The Complainant is required to prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

A screen capture of the Respondent’s website, produced in evidence by the Complainant, features an assortment of computer services and applications, with diagrams of computer systems and token clouds above them. Headings on the website include “Best user experience”, “Easy management”, “Superior economics”, “Replace/migrate on-prem virtual desktop deployments”, “New Windows Virtualizations”, “Manage Windows 7 end of support with WVD”, and others. A heading states, “We serve our customers across the APAC region”. A link under the heading “Start growing with CloudF5 today!” is marked “Get a free Estimate”, indicative of a commercial motivation. A number of links under the heading “CloudF5”, with a

cloud image, are grouped under “What We Do” and “Company”.

The content of the Respondent’s website is found to project that it offers commercial services in the field of computer services and that it does so under the F5 trademark, in the form “CloudF5”. The word “cloud” itself has acquired strong computing and data storage connotations in recent years and is a specific component of some of the Complainant’s own services. The Respondent’s website has a reference at the top: “Email: [...]@cloudf5.com.”

On the evidence and on the balance of probabilities, the Panel finds the disputed domain name to have been in use for the purpose of attracting Internet users to the corresponding website by confusion with the Complainant’s trademark, with the intention of conducting commercial business on the back of the goodwill accrued in the Complainant’s trademark, constituting use in bad faith under paragraph 4(b)(iv) of the Policy. There is no evidence the disputed domain name has been used for any other purpose since its registration on July 18, 2020, and the Panel finds on the balance of probabilities that it was registered for the bad faith purpose for which it has been used.

Accordingly the Panel finds the disputed domain name to have been registered and used in bad faith in the terms of 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 <cloudf5.com> be transferred to the Complainant.

*/Dr. Clive N.A. Trotman/*

**Dr. Clive N.A. Trotman**

Sole Panelist

Date: September 5, 2022