

ADMINISTRATIVE PANEL DECISION

Mav Media, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2022-3930

1. The Parties

The Complainant is Mav Media, LLC, United States of America (“United States”), represented by Silverstein Legal, United States.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrar

The disputed domain names <flimgster.com>, <flingerster.com>, <flingser.com>, <flingste.com>, <flingstee.com>, <flingstet.com>, <flingstr.com>, <flingstrr.com>, <flingsyer.com>, <flingter.com>, <flinsgter.com>, and <flongster.com> (the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2022. On October 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On October 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Domains By Proxy, LLC, United States) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 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 October 24, 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 October 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 16, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on November 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 operates an online adult video chat platform. The Complainant holds United States Trademark Registration No. 5,235,295 for the mark FLINGSTER, registered on July 4, 2017.

The Complainant owns the domain name <flingster.com> from which it operates its main website.

There are 12 Disputed Domain Names, all of which were registered between June 10, 2019 and March 6, 2020, as follows:

<flingsyer.com>, June 10, 2019;
<flingter.com>, June 10, 2019;
<flongster.com>, June 10, 2019;
<flingstet.com>, June 14, 2019;
<flingstr.com>, June 24, 2019;
<flingste.com>, July 29, 2019;
<flingser.com>, August 5, 2019;
<flingstee.com>, August 19, 2019;
<flingstrr.com>, September 17, 2019;
<flimgster.com>, January 10, 2020;
<flingerster.com>, February 28, 2020;
<flinsgter.com>, March 6, 2020.

The same person is named as the Registrant or Admin Contact or Tech Contact in every case, and often is named in more than one of these capacities. The Disputed Domain Names were all registered with the same Registrar by the same Respondent, using the same privacy service, with the same contact details. At the time of filing of the Complaint, some of the Disputed Domain Names resolved to similar looking pay-per-click (“PPC”) parking pages that included links to services that compete with those of the Complainant, and some of the Disputed Domain Names resolved, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant requests to consolidate the multiple domain names in this proceeding on the basis that “the registrants of the Disputed Domain Names are either the same person, entity, or network; are somehow connected to each other; or are under common control aimed at intentionally infringing the Complainant’s marks and harming consumers”.

The Complainant cites its United States trademark registration as *prima facie* evidence of ownership of the mark FLINGSTER.

The Complainant submits that its rights in the mark FLINGSTER predate the Respondent’s registration of the Disputed Domain Names. The Complainant submits that the Disputed Domain Names are confusingly similar to its trademark, because each of the Disputed Domain Names incorporates a recognizable version of the FLINGSTER trademark, and that the confusing similarity is not removed by the relevant misspelling, or the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of each of the Disputed Domain Names because “Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Mark in the Disputed Domain Names or in any other manner. Respondent is not commonly known by the Mark and does not hold any trademarks for the Disputed Domain Names” and none of the circumstances set out in paragraph 4(c) of the Policy apply. The Complainant also contends that “the Disputed Domain Names currently resolve, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant in an apparent scheme for the Respondent to derive commissions from ‘affiliate mark[et]ing’ programs” is not use of the Disputed Domain Names in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

Finally, the Complainant alleges that the registration and use of each of the Disputed Domain Names was, and currently is, in bad faith, contrary to the Policy and the Rules having regard to the prior use and targeting of the Complainant’s trademarks, and, it submits, “there is no benign reason for the Respondent to have registered the Disputed Domain Names”.

B. Respondent

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

6. Discussion and Findings

6.1.1 Preliminary Matters – Respondent Identity

The Panel observes that the Complaint was originally filed against Domains by Proxy, LLC, a privacy or proxy service provided by the Registrar. The Registrar having timely disclosed the underlying registrant upon receipt of the Center’s Request for Registrar Verification, the Panel therefore considers it appropriate to exercise its discretion to record only the nominally underlying registrant as the named Respondent (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.4.5).

6.1.2 Preliminary Matters – Consolidation and Common Control

A complaint is allowed to proceed with multiple respondents when the domain names or websites are under common control. See [WIPO Overview 3.0](#), section 4.11.2 where it states: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”.

The Complainant has pointed to a pattern of irregularities that suggest that the Disputed Domain Names are under common control. Three of the Disputed Domain Names <flingsyer.com>, <flingter.com>, and <flongster.com> were registered on June 10, 2019 and the other Disputed Domain Names were registered within nine months of that date; all use the same telephone number and address in Panama City in their Admin contact details. There is a pattern of omitting, replacing or reversing one letter in each of the Disputed Domain Names that suggests a similar *modus operandi*. The Disputed Domain Names are held with the same Registrar through the same privacy service entity, and, the Complainant’s uncontested submissions contends that “one or more of the Disputed Domain Names was registered after the [R]espondent received a demand letter from the [C]omplainant”. The Complainant also contends that “the Disputed Domain Names resolve to websites with the same layout or similar content” and that “the registrants of the Disputed Domain Names are either the same person, entity, or network”.

Paragraph 3(c) of the Rules provides that “[t]he complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.” The Panel notes that the

Registrar has confirmed that all of the 12 Disputed Domain Names were registered by the same underlying registrant “Carolina Rodrigues, Fundacion Comercio Electronico”.

The Panel accordingly concludes that it is fair and equitable and procedurally efficient for the Complaint to proceed in respect of all the Disputed Domain Names.

6.2 Substantive Matters

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) that the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark FLINGSTER. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see [WIPO Overview 3.0](#), section 1.2.1).

Turning to whether the Disputed Domain Names are identical or confusingly similar to the FLINGSTER trademark, the Panel observes that the Disputed Domain Names comprise a recognizable version of the Complainant’s FLINGSTER trademark, followed by the gTLD “.com”. The Complainant contends that the Disputed Domain Names contain the following typographical errors:

<flimgster.com>, the “n” is replaced with an “m”;
<flingerster.com>, an “er” is added between “fling” and “ster”;
<flingser.com>, the “t” is dropped;
<flingste.com>, the “r” is dropped;
<flingstee.com>, the “r” is replaced with an “e”;
<flingstet.com>, the “r” is replaced with a “t”;
<flingstr.com>, the “e” is dropped;
<flingstrr.com>, the “e” is replaced with an “r”;
<flingsyer.com>, the “t” is replaced with a “y”;
<flingter.com>, the “s” is dropped;
<flingsgter.com>, the “g” and “s” are reversed;
<flongster.com>, the “i” is replaced with an “o”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of each Disputed Domain Name, specifically: “flimgster”, “flingerster”, “flingser”, “flingste”, “flingstee”, “flingstet”, “flingstr”, “flingstrr”, “flingsyer”, “flingter”, “flingsgter”, and “flongster”, respectively.

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. As the relevant mark is recognizable in each of the Disputed Domain Names, this Panel finds that the Disputed Domain Names are confusingly similar to the Complainant’s FLINGSTER trademark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the omission, replacement and reversal of a letter in each of the respective Disputed Domain Names, does not avoid a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademark, as a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Names. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Names. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because it has not licensed, permitted or authorized the Respondent to use the Complainant's trademark and for that reason the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Mark in the Disputed Domain Names or in any other manner. Respondent is not commonly known by the Mark and does not hold any trademarks for the Disputed Domain Names."

The Complainant further submits that "the Disputed Domain Names currently resolve, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant in an apparent scheme for the Respondent to derive commissions from 'affiliate marketing' programs." The Panel accepts the Complainant's uncontested submission that "the Respondent has been using the Disputed Domain Names for direction purposes to reap undeserved affiliate commissions, thus unfairly and in bad faith profiting from the Complainant's reputation and its Mark."

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because it is engaging in a commercial use of the Disputed Domain Names by suggesting some association with the Complainant for the purpose of misleading consumers based on users seeking out the Complainant's mark FLINGSTER and opportunistically using the Complainant's trademark to divert Internet traffic to its PPC landing pages or third-party websites unaffiliated with the Complainant.

The Panel finds for the Complainant on the second element of the Policy

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, this Panel infers that the Respondent has deliberately targeted the Complainant's brand when it registered the Disputed Domain Names and knew, or should have known, that its registration of the Disputed Domain Names would be confusingly similar to the Complainant's trademark (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the Complainant's evidence is that some of the Disputed Domain Names resolved to PPC landing pages, many displaying keywords including "Singles Dating", "Casual Dating", and "Nearby Singles", and some of the Disputed Domain Names redirected to third-party websites unaffiliated with the Complainant. This Panel accepts the Complainant's uncontested evidence as evidence of bad faith use.

The Panel finds that the Respondent cannot disclaim responsibility for content appearing on the PPC web-pages associated with the Disputed Domain Names even though such links are generated by a third party platform, for the reason that there appear to have been no positive efforts by the Respondent to seek to prevent a finding of bad faith, such as by using negative keywords to avoid links such "Singles Dating", "Casual Dating", and "Nearby Singles" which plainly target the Complainant's mark (see [WIPO Overview 3.0](#), section 3.5). Targeting of this nature is a common example of bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), sections 3.1.4, and 3.2.1).

This Panel finds that this is a case of classic typosquatting where the Respondent has taken recognizable version of the Complainant's trademark FLINGSTER and incorporated it in the Disputed Domain Names without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain.

The Panel also observes that the Respondent has been the unsuccessful respondent in more than 320 other UDRP proceedings that are easily located by a search of the Center's public website. The Panel therefore finds that that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

The Panel further observes that the Respondent does have a pattern of using privacy services - notably that of the Registrar - to mask its tracks generally, which calls into question the issue of good faith when registrars or privacy services continue to do business with such bad actors.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 Names, <flimgster.com>, <flingerster.com>, <flingser.com>, <flingste.com>, <flingstee.com>, <flingstet.com>, <flingstr.com>, <flingstrr.com>, <flingsyer.com>, <flingter.com>, <flinsgter.com>, and <flongster.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: December 5, 2022