

ADMINISTRATIVE PANEL DECISION

Pink Floyd (1987) Limited v. Chunliu Lu
Case No. D2023-0846

1. The Parties

The Complainant is Pink Floyd (1987) Limited, United Kingdom, represented by Boulton Wade Tennant, United Kingdom.

The Respondent is Chunliu Lu, China.

2. The Domain Name and Registrar

The disputed domain name <pinkfloydtrader.com> (the “Disputed Domain Name”) is registered with Hong Kong Juming Network Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 27, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 27, 2023, 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 February 28, 2023.

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 March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on March 30, 2023. 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 an English rock band formed in 1965 that has released and sold numerous records, studio albums, live albums and singles in the years since its formation. To date, the Complainant is estimated to have sold over 250 million albums worldwide. The Complainant has also carried out extensive merchandising of various products associated with the Complainant and its albums.

The Complainant is well known and recognizable, enjoying a significant reputation worldwide. The Complainant's fame is reflected in its induction into the United States Rock & Roll Hall of Fame in 1996. Moreover, the Complainant has a large, worldwide fan base. The Complainant's reputation extends to China, where the Respondent purportedly resides. Articles have been written in Chinese newspapers about the Complainant, and the Complainant's licensed merchandise is available for purchase in China by Chinese consumers.

The Complainant owns numerous trademark registrations for the PINK FLOYD trademark, including, but not limited to: PINK FLOYD, United Kingdom Registration No. 2066619, registered on October 18, 1996, in International Classes 9, 16, 25 and 41; PINK FLOYD, Chinese Registration No. 54326700A, registered on, November 21, 2021, in International Class 25; PINK FLOYD, Chinese Registration No. 60333416A, registered on June 14, 2022; and United States of America Registration No. 2,194,702, registered on October 13, 1998, in International Classes 9, 16, 25 and 41 (hereinafter collectively referred to as the "PINK FLOYD Mark").

The Complainant also owns numerous domain names containing or incorporating the PINK FLOYD Mark, including <pinkfloyd.com>, <pinkfloydexhibition-theirmortalremains.com>, and <pinkfloydexhibition.com>, among many others. The <pinkfloyd.com> domain name resolves to the Complainant's official website at "www.pinkfloyd.com."

The Disputed Domain Name was registered on August 13, 2022 and resolves to an inactive landing page that contains no substantive content. Thus, the Respondent is using the Disputed Domain Name passively.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's PINK FLOYD Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the PINK FLOYD Mark.

It is uncontroverted that the Complainant has established rights in the PINK FLOYD Mark based on its fame as well as its numerous registered trademarks for the PINK FLOYD Mark in jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the PINK FLOYD Mark.

The Disputed Domain Name consists of the PINK FLOYD Mark in its entirety followed by the term "trader", and then followed by the generic Top-Level Domain ("gTLD") ".com". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". The mere addition of the term "trader" to the Complainant's PINK FLOYD Mark to create the Disputed Domain Name <pinkfloydtrader.com> cannot prevent confusing similarity. See *e.g.*, *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Disputed Domain Name is confusingly similar to the Complainant's PINK FLOYD Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its PINK FLOYD Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c). Moreover, the Complainant does not have any business relationship with the Respondent and based on the use made of the Disputed Domain Name to resolve to an inactive landing page, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. As other UDRP panels have contended, "[p]assively holding a domain name does not constitute a *bona fide* offering of goods or services". *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#).

Furthermore, the composition of the Disputed Domain Name, comprising the entirety of the PINK FLOYD Mark, carries a risk of implied affiliation and cannot constitute fair use here, as it effectively suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In sum, the Panel finds that the Complainant has established an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(b) of the Policy.

First, the fame of the PINK FLOYD Mark, which was used and registered by the Complainant in advance of the Respondent's registration of the Disputed Domain Name, renders it wholly implausible that the Respondent created the Disputed Domain Name independently. The Disputed Domain Name was registered years after the Complainant first began using the PINK FLOYD Mark. Therefore, the Panel finds it likely that the Respondent had the Complainant's PINK FLOYD Mark in mind when registering the Disputed Domain Name, demonstrating bad faith. Based on the widespread use of the PINK FLOYD Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its PINK FLOYD Mark when registering the Disputed Domain Name. Thus, as here, prior knowledge of a complainant's famous trademark before registering a disputed domain name is sufficient to find bad faith under Policy paragraph 4(a)(iii). In sum, UDRP panels have found that the registration of a disputed domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Second, based on the circumstances here, the Panel concludes that the Respondent's registration and use of the Disputed Domain Name had been done for the specific purpose of trading on the name and reputation of the Complainant and its PINK FLOYD Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Finally, inactive or passive holding of the Disputed Domain Name by the Respondent may amount to bad faith. See *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#); *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. [D2005-1085](#). It has long been held in UDRP decisions that the passive holding of a disputed domain name that incorporates a well-known or distinctive trademark without a legitimate purpose does not prevent a finding that the disputed domain

name is being used in bad faith under paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#). Specifically, UDRP panels have frequently found that the lack of active use of a disputed domain name (*i.e.*, passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3.

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent’s concealment of its identity. or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Based on the above, the Panel has taken into consideration the following factors in arriving at a finding of bad faith registration and use: (i) the Complainant’s trademark is well-known; (ii) the Respondent appears to have taken pains to conceal its identity by using a privacy protection service; and (iii) the Respondent has not submitted a response in the proceeding. The Panel therefore finds that the Disputed Domain Name has been registered and used in bad faith.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <pinkfloydtrader.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: April 13, 2023