

ADMINISTRATIVE PANEL DECISION

Laboratoires Fill-Med v. 周光国 (Zhou Guang Guo)
Case No. D2023-2786

1. The Parties

The Complainant is Laboratoires Fill-Med, France, represented by Ebrand France, France.

The Respondent is 周光国 (Zhou Guang Guo), China.

2. The Domain Name and Registrar

The disputed domain name <filmed.com> is registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 3, 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 July 7, 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 amendment to the Complaint in English on July 10, 2023.

On July 7, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted its request that English be the language of the proceeding on July 7, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on July 13, 2023. In accordance with the Rules (paragraph 5) the due date for Response was August 2, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on August 3, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on August 7, 2023. The Panel finds that it was properly constituted. The Panel 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, Laboratoires Fill-Med, specializes in cosmetics and aesthetic medicine. Since 1978, it has been developing, manufacturing, and marketing medical devices, as well as cosmetic and anti-aging products for professionals in the field of aesthetic medicine.

The Complainant has an extensive global portfolio of the FILL-MED trade mark, including the following:

- International Trade Mark Registration No. 1351198 for FILL-MED in Classes 3, 5 and 10 registered on March 13, 2017; and
- European Union Trade Mark Registration No 016453235 for FILL-MED in Classes 3, 5 and 10 registered on July 6, 2017.

The disputed domain name <fillmed.com> was registered on May 3, 2022.

The Complainant's evidence indicates that at the time of filing of the Complaint, the disputed domain name resolved to a mirror site of the Complainant's website "www.fillmed.com" reproducing LABORATOIRES FILL-MED's entire graphic charter, trade marks and photos. At the time of this decision, the disputed domain name resolved to an inactive page.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the FILL-MED trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's FILL-MED trade mark.

The Complainant asserts that it has not authorized the Respondent to use its FILL-MED trade mark, and there is no evidence to suggest that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that, considering the evidence, it is implausible that the Respondent registered the disputed domain name in good faith, and that any use of the disputed domain name must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

“[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English and requested that English be the language of the proceeding for the following main reasons:

- The Registration Agreement could be found in English;
- The language of the contents on the webpage under the disputed domain name is not Chinese and the disputed domain name resolved to a site completely in English at the time of filing of the Complaint;
- The Complainant is not in a position to conduct these proceedings in Chinese without significant additional expense and delay due to the need to arrange for the translation of the Complaint and the supporting Annexes.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

After considering the foregoing of this case, the Panel has determined that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not cause any prejudice to either Party and should facilitate a prompt resolution of the proceeding.

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the FILL-MED trade mark.

The disputed domain name incorporates the Complainant's trade mark FILL-MED in its entirety, with the only alteration being the substitution of the first letter "L" with the letter "I".

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers that the disputed domain name is an obvious misspelling of the Complainant's trade marks, as it replaces an "L" with "I" (letters that are basically identical when used in lower and upper case, respectively) but is otherwise confusingly similar to the Complainant's trade marks.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the FILL-MED trade marks and in demonstrating that the disputed domain name is identical or confusingly similar to its marks.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to make a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name. Once a *prima facie* case is made out, the respondent carries the burden of producing evidence in support of its rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant can be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has satisfactorily established a *prima facie* case.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case. Furthermore, the disputed domain name resolved to a mirror site of the Complainant's website, and such use does not confer rights or legitimate interests on the Respondent here.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the FILL-MED trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

In addition, the disputed domain name consists of an obvious typo-squatting variation of the Complainant's official website at the domain name <fillmed.com>. The Respondent has also provided no evidence to justify his choice of the term "fiilmed" in the disputed domain name and linking this disputed domain name to a mirror site of the Complainant's website. In light of the foregoing, it would be unreasonable to conclude that the Respondent - at the time of the registration of the disputed domain name - was unaware of the Complainant's trade marks.

As for use, according to the Complainant's evidence, at the time of filing of the Complaint, the disputed domain name resolved to a mirror site of the Complainant's website reproducing LABORATOIRES FILL-MED's entire graphic charter, trade marks and photos. At the time of this decision, the disputed domain name resolved to an inactive page.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights, and is using the disputed domain name to intentionally attract, for commercial gain, Internet users to his website or other online locations, by creating a likelihood of confusion with the Complainant's trade marks.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <fiilmed.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: August 21, 2023