

ADMINISTRATIVE PANEL DECISION

UAB VIRPIL v. Povilas Dumcius

Case No. D2024-0858

1. The Parties

The Complainant is UAB VIRPIL, Lithuania, represented by Šenavičius ir partneriai RESPONSE, Lithuania.

The Respondent is Povilas Dumcius, Lithuania.

2. The Domain Name and Registrar

The disputed domain name <flicontech.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 February 27, 2024. On February 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 2024, 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 (The Respondent and its details are unknown since the Respondent is hiding its identity behind a privacy service) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 29, 2024 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 March 1, 2024.

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 March 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2024. The Respondent sent an email communication to the Center on March 13, 2024 requesting a copy of the Complaint with attachments to different e-mail addresses. The Center provided this information on the same date. The Respondent did not file a formal Response, and the Centre notified the Parties of the Commencement of the Panel Appointment Process on March 25, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on March 28, 2024. 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 manufactures and markets specialized computer joysticks and related products for flight simulators marketed to flight enthusiasts. It is the proprietor of European Union Trade Mark No. 018777559 for FLICON (word mark), registered on February 1, 2023 for goods in classes 9 and 28.

The disputed domain name was registered on May 25, 2023. It resolves to an e-commerce website offering various “EVO” branded computer joysticks and related devices for sale.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name entirely incorporates its FLICON trademark. The disputed domain name resolves to a website selling products marketed by the Complainant’s direct competitor. These products are copies of the flight simulator products developed by the Complainant starting in 2016. The disputed domain name is used in a way that infringes the Complainant’s intellectual property and know-how.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

Under 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”.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark, namely, the registered FLICON mark, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “tech”), may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the disputed domain name resolved to a site featuring products that appear similar to the Complainant’s, albeit under the “Evo” brand. Under these circumstances, the Panel finds that such use clearly does not establish rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#), section 2.9. Moreover, the composition of the disputed domain name, which contains the Complainant’s FLICON trademark, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

The record does not contain evidence that, at the time of the Complaint, the Respondent was commonly known by the disputed domain name or was making legitimate noncommercial use thereof. Rather, the Complainant alleges (and the Respondent, in failing to provide a Response, does not refute) that the Respondent is selling counterfeit goods. It is not clear to the Panel if this is the case, given that elsewhere in the Complaint the Respondent is referred to as a competitor – in this case, it seems that the Complainant is using the term “counterfeit” to refer to what it believes to be an infringing (competing) product.

Based on this record, on the balance of probabilities, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has entirely incorporated the registered trademark of its competitor in the disputed domain name. The registration of the trademark precedes the registration of the disputed domain name by several months. The record indicates that both Parties are located in Lithuania and operate within a highly specialized field, namely, marketing equipment to flight simulator enthusiasts. Based on these circumstances, the Panel finds that the evidence supports a finding that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In this case, the Panel notes that the Complainant has not provided evidence that it is using its FLICON mark in connection with flight simulator products. Its website (at the domain name <virpil.com>) displays "Virpil" branded products. The Complainant claims that the Respondent is marketing goods that are copies of its products, but on the available evidence the Panel is unable to come to any conclusion on this allegation. The Panel notes that the Respondent's goods are branded as "EVO" products, which is distinct from the Complainant's registered FLICON mark and the "Virpil" brand displayed on the Complainant's website.

The Panel notes that the disputed domain name reflects a registered mark that neither Party currently appears to be using, other than in the disputed domain name. However, the Panel notes the clear absence of the Respondent's own rights or legitimate interests in the disputed domain name, the nature of the disputed domain name, the fact that both Parties are marketing similar goods, the timing of the registration of the disputed domain name, and the Respondent's failure to submit a Response. Under these circumstances, on balance of probabilities the Panel finds that the disputed domain name was registered and is being used in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <flicontech.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: April 11, 2024