

ADMINISTRATIVE PANEL DECISION

Dassault Aviation, Dassault Falcon Jet Corp. v. xiang jun chen
Case No. D2024-1909

1. The Parties

The Complainants are Dassault Aviation, France (the “Complainant 1”), and Dassault Falcon Jet Corp., United States of America (“United States”) (the “Complainant 2”), represented by Cabinet Regimbeau, France.

The Respondent is xiang jun chen, China.

2. The Domain Name and Registrar

The disputed domain name <falcon6x.com> (the “Domain Name”) is registered with ! #1 Host Australia, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 7, 2024. On May 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 15, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 10, 2024.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on June 18, 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 1 designs, manufactures and supports military and civil aircrafts. As of 2023, its sales amounted to EUR 4.8 billion.

The Complainant 2 is the subsidiary of the Complainant 1 in the United States. It is dedicated to the sales and support of business jets under the FALCON trademark in the Americas.

The Complainant 1 is the owner of numerous FALCON trademark registrations, including:

- the International Trademark Registration for FALCON (figurative) No. 335858, registered on May 18, 1967;
- the International Trademark Registration for FALCON (word) No. 698584, registered on September 4, 1998; and
- the French Trademark Registration for FALCON (word) No. 1398488, registered on August 14, 1987.

The Complainant 2 is also the owner of numerous FALCON trademark registrations, including the United States Trademark Registration for FALCON (word) No. 73393268, registered on September 6, 1983. Moreover, the Complainant 2 is the owner of the United States Trademark Registration for FALCON 6X (word) No. 87765025, registered on October 30, 2018.

The Complainants also use numerous domain names incorporating their FALCON trademark, such as <dassaultfalcon.com>, <falconjet.com>, or <falcon3x.com>, <falcon7x.com>, and <falcon10x.com>.

According to the evidence provided in the Complaint, the Domain Name was previously owned by the Complainants until its registration expired. On July 4, 2023, the Domain Name was registered by the Respondent.

At the time of submitting the Complaint, the Domain Name did not resolve to any active website. However, according to the screenshots of March 25, 2024, included in the Complaint, when the Domain Name was accessed using the Chinese search engine Baidu, it resolved to the website featuring commercial and pay-per-click ("PPC") links to the pornography websites and online games.

As of the date of this Decision, the Domain Name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Domain Name.

First, the Complainants contend that the Domain Name is confusingly similar or identical to the trademarks in which the Complainants have rights.

Second, the Complainants argue that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainants submit that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainants to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;
- (ii) the Respondent has no rights or legitimate interests in the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met. At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

Under the first element, the Complainants must establish that the Domain Name is identical or confusingly similar to the trademark in which the Complainants have rights.

The Complainant 2 holds valid FALCON 6X trademark registration. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The Top-Level Domain “.com” in the Domain Name is viewed as a standard registration requirement and as such is typically disregarded under the first element test. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”).

Given the above, the Panel finds that the Domain Name is identical to the FALCON 6X trademark of the Complainant 2 for purposes of the Policy. Thus, the Complainants have satisfied the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element, the Complainants must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the Domain Name, even if it has not acquired any trademark rights; or
- (iii) that it is 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the FALCON 6X trademark registration of the Complainant 2 predates the Respondent's registration of the Domain Name. There is no evidence in the case record that the Complainant 2 has licensed or otherwise permitted the Respondent to use the FALCON 6X trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a bona fide offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. On the contrary, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has not resolved to any active website. However, according to the screenshots of March 25, 2024, included in the Complaint, when the Domain Name was accessed using the Chinese search engine Baidu, it resolved to the website featuring PPC links to pornography websites and online games. Such use of the Domain Name does not confer rights or legitimate interests on the Respondent.

While specific case factors have led previous panels to find that fair use need not always be categorically noncommercial in nature, unambiguous evidence that the site is not primarily intended for commercial gain, e.g., the absence of commercial or PPC links, would tend to indicate a lack of intent to unfairly profit from the complainant's reputation. See section 2.5.3, [WIPO Overview 3.0](#). As indicated above, the Domain Name resolves to the website featuring such commercial and PPC links. These links allow the Respondent to profit from the attracted web traffic and collect click-through revenue from advertising links. Such use demonstrates that the Respondent has used the Domain Name to derive a commercial benefit.

Furthermore, the Respondent's use of the Domain Name will fundamentally not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between the Domain Name and the Complainants' mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark, such as in the case at hand, carry a high risk of implied affiliation. See sections 2.5 and 2.5.1, [WIPO Overview 3.0](#).

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainants' prima facie case. The Panel concludes that the Complainants have also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainants must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark. See section 3.1 of the [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the rights of the Complainant 2 in the FALCON 6X trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of this trademark at the time of registration. The Panel notes that, according to the evidence provided in the Complaint, the Domain Name was previously owned by the Complainants to advertise and promote their aircrafts. After the registration of the Complainants expired, the Domain Name was registered by the Respondent. Moreover, the Complainants use numerous domain names incorporating their FALCON trademark and highly similar to the Domain Name, such as <falcon3x.com>, <falcon7x.com>, or <falcon10x.com>. Finally, it has been proven to the Panel's satisfaction that the FALCON and FALCON 6X trademarks are well known and unique to the Complainants. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under these trademarks. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the FALCON and FALCON 6X trademarks.

The Panel notes also that according to the screenshots of March 25, 2024 included in the Complaint, when the Domain Name was accessed using the Chinese search engine Baidu, it resolved to the website featuring commercial and PPC links to pornography websites and online games. Noting the nature of the Domain Name including the FALCON 6X trademark in its entirety, the Panel finds that the Respondent registered the Domain Name in the knowledge of the FALCON 6X trademark and business with the intention of taking unfair advantage of the Complainant's goodwill attaching to those trademarks. Additionally, the Panel finds that the Respondent most likely used the Domain Name in order to create confusion in the minds of Internet users for the purpose of attracting Internet traffic for commercial gain.

With respect to "automatically" generated PPC links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. See section 3.5, [WIPO Overview 3.0](#).

As of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has not resolved to any active website. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3 of the [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainants' trademarks and the implausible good faith use to which the identical Domain Name may be intrinsically put, the Panel agrees with the above.

For the reasons discussed above, the Panel finds that the Complainants have proved the requirements under 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 Domain Name <falcon6x.com> be transferred to the Complainant 1 – Dassault Aviation.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: June 27, 2024