

ADMINISTRATIVE PANEL DECISION

FloQast, Inc. v. Richard Russell, FloQast
Case No. D2024-2221

1. The Parties

Complainant is FloQast, Inc., United States of America (“United States” or “US”), represented by Pranger Law PC, United States.

Respondent is Richard Russell, FloQast, United States of America.

2. The Domain Name and Registrar

The disputed domain name <thefloqast.xyz> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2024. On May 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 (PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on June 4, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 10, 2024.

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 Respondent of the Complaint, and the proceedings commenced on June 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 11, 2024.

The Center appointed R. Eric Gaum as the sole panelist in this matter on July 16, 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

Complainant owns multiple trademark registrations and applications in several countries for the FLOQAST and FLOQAST-formative marks, including those shown in the chart below:

Trademark	Jurisdiction	Status	Reg./App. No.	Status
FLOQAST	United States	Registered: February 14, 2017	5141415	Registered
#FLOQAST (and design)	United States	Notice of Publication: April 3, 2024	98063495	Published on April 23, 2024

Below are representative goods and services for which Complainant's FLOQAST Marks are registered or have been published in Trademark Official Gazette in the United States: US Registration No. 5141415:

CLASS 42: Software as a service (SAAS) services featuring software for streamlining the accounting month end close.

US Application No. 98063495:

CLASS 42: Providing online non-downloadable software for streamlining the accounting month end close; software as a service (SaaS) services featuring software for streamlining the accounting month end close.

Complainant also has common law rights in the FLOQAST mark and owns the domain name <floqast.com>, which Complainant has used since at least as early as 2013 with one or more of Complainant's FLOQAST Marks. Complainant has provided certain of the goods and services described under the FLOQAST mark since at least as early as 2014.

The disputed domain name was registered on May 9, 2024, it was used in connection with an email address to send fraudulent job offers.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that its Complaint is based on the trademark FLOQAST owned by Complainant and Respondent's use of the identical mark to perpetrate a fraudulent and illegal phishing scam targeting individuals who Respondent falsely leads to believe they are being offered employment by Complainant.

Complainant also contends that Respondent has never used the disputed domain to host any content created by Respondent. Instead, the disputed domain has only ever resolved to a "parked" domain purportedly generated using a third-party service called "Sedo Domain Parking."

Furthermore, Complainant contends that Respondent registered the disputed domain and has used it in bad faith, as evidenced by fraudulent phishing emails sent from email addresses associated with the disputed domain, which uses Complainant's FLOQAST mark preceded by the word "the" and the local-part (or username) "careers" to imply that the emails concern employment with Complainant (i.e. email address with the term "careers" and "@thefloqast.xyz").

As support for this contention, Complainant cites to an email dated May 9, 2024. The email address "[...@thefloqast.xyz]" was used to send a fraudulent email to a job-seeker purporting to concern potential

employment with Complainant. The intended victim of the fraudulent email and job-offer forwarded the email to Complainant after “interviewing” with “someone posing as [Complainant’s] HR,” as they “quickly realized that it was a fake offer.” The intended victim noted that it is “unfortunate they are using [Complainant’s] reputation to target people who are trying to find real opportunities. Complainant also included a number of additional fraudulent emails that were sent to other individuals.

Complainant contends that the fraudulent emails falsely and wrongfully represent that the emails concerned employment with Complainant. Complainant believes that Respondent’s fraudulent scheme was to convince individuals that they have been hired by Complainant and that they are required to “purchase” devices such as cell phones and computers for their new job. Complainant even noted that some of the emails were sent the same day the disputed domain name was registered.

Finally, Complainant contends that Respondent’s provision of an invalid entity name and physical address to the Registrar (using the name of Complainant and an address associated with Complainant), further evidences Respondent’s bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

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 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.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. One of the marks is FLOQAST, US Reg. No. 5141415. The entirety of this mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical and/or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The only difference between the mark that is reproduced within the disputed domain name is that it includes the prefix “the”, i.e., thefloqast, whereas Complainant’s trademark does not. The Panel finds that this difference is insignificant and irrelevant to the analysis.

Furthermore, although the addition of other terms, here “the” may bear on assessment of the second and third elements, the Panel finds the addition of such 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 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 Respondent registered the disputed domain and used it to send phishing emails through email addresses associated with the disputed domain name, which uses the Complainant's FLOQAST mark preceded by the word "the" and the local-part (or username) "careers" to imply that the emails concern employment with Complainant (i.e. email address using the term "careers" followed by "@thefloqast.xyz"). The example cited by Complainant of Respondent sending a fraudulent email to a job-seeker purporting to concern potential employment with Complainant is clearly a bad faith use of the disputed domain name.

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.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: phishing, impersonation/passing off, and other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. Complainant's contention that Respondent provided an invalid entity name and physical address to the Registrar (using Complainant's name and an address associated with Complainant), further supports the Panel's finding of Respondent's bad faith.

The Panel finds that 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 <thefloqast.xyz> be transferred to Complainant.

/R. Eric Gaum/

R. Eric Gaum

Sole Panelist

Date: August 1, 2024