

ADMINISTRATIVE PANEL DECISION

Uber Technologies, Inc. v. Marc Sellouk, Flewber Inc and Marc Sellouk,
Flewber Inc.

Case No. D2024-4009

1. The Parties

The Complainant is Uber Technologies, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondents are Marc Sellouk, Flewber Inc and Marc Sellouk, Flewber Inc., United States.

2. The Domain Names and Registrar

The disputed domain names <flewber.com>, <flewberjets.com>, <flewber-luxe.com>, <flewberluxe.com>, <flewber.net>, <flewberskies.com>, and <flyflewber.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2024. On September 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private / Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 1, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on October 2, 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 Respondents of the Complaint, and the proceedings commenced on October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 23, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on October 30, 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, whose predecessor was founded in 2009, is a Delaware (United States) corporation whose shares have been traded on the New York Stock Exchange since May 2019 and have been included in the S&P 500 since December 2023. The Complainant operates a technology platform that connects consumers with independent drivers for ridesharing services and with public transportation networks. The Complainant also connects consumers with restaurants and grocers for meal deliveries and offers a variety of other consumer and business delivery and freight services. Operating in some 70 countries, in 2023 the Complainant had more than 30,000 employees, 150 million monthly active platform customers, and revenues of over USD 37 billion.

The Complainant's operations have also included air transport services at least intermittently since 2013. These included an "UberCHOPPER" helicopter taxi service in the New York City area and in other cities in the United States and in other countries before the disputed domain names were registered. The Complainant formed an Uber Elevate division in 2016 to provide aerial ridesharing under the UBER AIR brand, publishing a White Paper on the subject that year and hosting "Uber Elevate" summits in 2017, 2018, and 2019 to explore the future of urban aviation. The Complainant trademarked UBER ELEVATE (United States Registration Number 5525494) in 2018 and UBER AIR (United States Registration Number 6119287) in 2020. The Complainant sold its Uber Elevate business to Joby Aviation in 2020 as part of a larger transaction in which the Complainant invested in Joby Aviation. The Complainant's website still includes an "Uber Elevate" page envisioning "Aerial ridesharing at scale" based on all-electric, vertical take-off and landing ("eVTOL") aircraft operating as "Uber Air".

The Complainant has operated a principal website at "www.uber.com" since 2011 and also operates other domain names incorporating the UBER mark, such as "www.ubereats.com" and "www.uberfreight.com". The UBER mark is also used to label the Complainant's social media accounts.

The Complainant holds more than 1,700 UBER and UBER-derivative trademark registrations, including the following:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
UBER CAB (word)	United States	3842416	August 31, 2010	International Classes 9, 39, and 42;
UBER (word)	United States	3977893	June 14, 2011	International Classes 9, 38, 39, and 42;
UBER (word)	International (multiple designations)	1111203	December 13, 2011	International Classes 9, 38, 39, and 42;

Each of the seven disputed domain names was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as Marc Sellouk of the organization Flewber Inc or Flewber Inc. (with or without a period after the abbreviation for "incorporated"), with the same telephone contact number, all listed at one or the other of two postal

addresses in the State of New York, United States. The pertinent registration details can be summarized as follows, listing the disputed domain names in chronological order:

Disputed Domain Name	Registrant and Organization	Date of Creation
<flewber.com>	Marc Sellouk, Flewber Inc.	April 11, 2018
<flewberskies.com>	Marc Sellouk, Flewber Inc.	September 9, 2018
<flyflewber.com>	Marc Sellouk, Flewber Inc.	December 20, 2018
<flewberlux.com>	Marc Sellouk, Flewber Inc.	November 19, 2019
<flewber.net>	Marc Sellouk, Flewber Inc.	May 11, 2022
<flewber-luxe.com>	Marc Sellouk, Flewber Inc.	March 24, 2023
<flewberjets.com>	Marc Sellouk, Flewber Inc.	May 3, 2023

The disputed domain names have all resolved or redirected to a website (the “Respondent’s website”) headed “Flewber” advertising an on-demand private jet flight reservations service via a mobile app, which apparently launched in 2019. The Respondent offers both access for booking seats on private jets owned by third parties and a “Flewber Hops” ridesharing service (similar to the Complainant’s ridesharing model in ground transport) initially serving the Northeastern United States, where the Respondent owns and operates its own single-engine jet. The text describing Flewber Hops anticipates that the Respondent will ultimately use eVTOL aircraft for this service when they become available (similar to the Complainant’s envisioned eVTOL “Uber Air” service mentioned above). The Respondent also offers a “FlewberLuxe” service that includes ground transportation as well as in-flight catering.

The “Our Team” page of the Respondent’s website lists Marc Sellouk as Flewber’s founder, chairman, and CEO. The Terms and Conditions page refers to Flewber Inc., while the copyright notice is in the name of Flewber Global Inc. According to the online database of the New York Department of State, Flewber Inc. is a New York corporation first registered on August 10, 2018, while Flewber Global Inc. is a Delaware corporation formed on January 22, 2019. Both companies list Marc Sellouk as their CEO.

At the time of this Decision, the Respondent’s website does not mention the Complainant by name, but it refers to bringing “the ease of ridesharing from the street to the sky.” In 2019, the Respondent’s website more directly suggested a connection with the Complainant, as shown in screenshots captured by the Complainant or available from the Internet Archive’s Wayback Machine. The Respondent’s website presented an illustration of the “Experience” showing how a user would first book a flight in the Respondent’s mobile app, then reserve car service, and then proceed on the journey; the site also included this text:

“UBER TO YOUR FLEWBBER ... provide you with the convenience of booking an Uber to your Flewber within our app”.

In the “Why Fly Flewber?” section of the Respondent’s website at that time, the Respondent expanded on this functionality by stating that the Respondent would claim rebates “for all passengers who choose to book an Uber ride within Flewber app while booking a flight” so the customer could “enjoy the seamless experience of booking your flight and ground travel (Uber) to the airport through the Flewber App.”

Thus, it was not clear from the text of the Respondent’s website whether there was actually an arrangement between the Respondent and the Complainant and an automated integration between their software platforms, or if the Respondent simply gave the customer a credit equivalent to the cost of ground transport via the Complainant’s service. The “seamless experience” language suggested an association that the Complainant denies ever existed.

The Respondent’s website and representatives have arguably encouraged consumers to link the name “Flewber” with the well-known UBER mark from the beginning. On April 16, 2019, the Respondent posted on its Facebook page an interview published in the “Rockland Business Journal” with the Respondent’s CEO Mr. Sellouk, in which Mr. Sellouk characterized the company name “Flewber” as “a cheeky wink at Uber.” In that same interview, Mr. Sellouk explained that ordering flights on Flewber “will be as seamless as

ordering an Uber” and that through Flewber, he has “built a parallel to what Uber did.” Similarly, in an interview with Fox Business on July 2, 2019, which is available online and quoted in the Complaint, Mr. Sellouk described the Respondent’s aim of “making booking a private plane as easy as hailing a ride from Uber” and laughed in agreement with the interviewer’s remark, “I see what you did there – like ‘Uber’ but with a ‘Flew’ in front of it.”

In 2018, the Respondent filed an application with the United States Patent and Trademark Office (USPTO) to register FLEWBER as a standard-character trademark in connection with airline transportation services, Serial Number 88086195, filed August 21, 2018. The Complainant became aware of that application and the Respondent’s website (and thus the disputed domain name <flewber.com>) in 2019. The Complainant’s legal representative sent an email to the Respondent’s legal counsel on August 19, 2019, objecting that the use of FLEWBER “constitutes trademark infringement and unfair competition and dilutes Uber’s famous trademark rights, as it is likely to cause consumers to mistakenly believe that Uber sponsors, approves of, or its somehow affiliated with Flewber’s services.” Counsel for Flewber responded by emailing a letter on September 12, 2019, disputing the likelihood of confusion. However, the Respondent subsequently abandoned its trademark application and removed explicit references to the Complainant from its website.

Nevertheless, the Respondent continued to do business under the “Flewber” name and registered the additional disputed domain names incorporating that name. Moreover, the Respondent’s representatives continued to encourage comparisons with the Complainant, as the Respondent’s news releases and interviews gave rise to media stories, which were sometimes posted on the Respondent’s website or social media pages. On April 21, 2022, for example, the Respondent posted on its Facebook page an article from “Travel + Leisure” magazine under the headline, “This New App Is Like Uber for Private Jets – Here’s How It Works.” Another post on its Facebook page, dated April 28, 2022, quoted from an article published on “UrbanDaddy.com” titled, “Flewber Is Like Uber for Private Jets.”

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 names.

Notably, the Complainant contends that each of the disputed domain names is confusingly similar to its registered UBER marks. Citing WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, the Complainant observes that UDRP panels have taken a holistic approach in assessing similarity, including an “aural or phonetic comparison”. The distinctive “flewber” portion of each of the disputed domain names is pronounced similarly to the mark UBER. Moreover, this similarity is deliberately suggestive; the disputed domain names are used for a ridesharing service on the same model as the Complainant’s.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has not authorized the Respondent to use a business name or disputed domain names confusingly similar to the Complainant’s UBER marks. The Complainant argues that the facts that the Respondent has corresponding company names and has been doing business under those names for years do not confer legitimacy. This is because the Respondent’s choice of a confusingly similar name in 2018 was meant to exploit the Complainant’s mark, which had become world-renowned since the Complainant’s business was launched in 2009. Targeting an established mark is not consistent with a bona fide use, and registering a corresponding company name does not create legitimacy if the intent is to take advantage of the goodwill associated with another. (Citing *Royal Bank of Canada v. RBC Bank*, WIPO Case No. [D2002-0672](#); and *A&G Insurance Services Pty Ltd v. AAA Budget Greenslips Pty Ltd*, WIPO Case No. [DAU2012-0014](#).)

The Complainant further contends that because its UBER marks are so well known, and because the Respondent itself expressly relied on consumer familiarity with the UBER marks, it must be concluded that the Respondent meant to exploit the Complainant's marks, which is bad faith under the Policy. The Complainant advances arguments for bad faith under other theories as well, including constructive notice and a presumption of bad faith arising from "the mere registration" of disputed domain names confusingly similar to a famous or widely known trademark, as well as the registration of multiple domain names, which is claimed to be an effort to deprive the trademark holder of the opportunity of reflecting the mark in a corresponding domain name. But the Complainant's salient arguments are that the Respondent in its own words has repeatedly invoked the Complainant's mark and unfairly borrowed the Complainant's reputation, and that the use of the disputed domain names risks initial interest confusion, which in this case is reinforced by abusive website content. The Complainant cites another UDRP proceeding it successfully prosecuted against a different respondent for a similar misuse of a confusingly similar domain name, which also was used for a private jet booking service. Citing *Uber Technologies, Inc. v. Paul Svensen*, WIPO Case No. [D2020-3210](#). The panel in that proceeding found bad faith on the ground that the respondent chose the term "uber" to target an audience familiar with the Complainant's mark, a finding that was supported by website content referring to the Complainant, such as "Uber for private jets".

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amendment to the Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity, and the Panel finds that this is probable.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel considers whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

The named individual registrant Marc Sellouk is the same in each of the registrations, and the organization named differs only by including or omitting a period after the letters "Inc" indicating a corporate entity. The contact details overlap, and the disputed domain names have all been used to resolve or redirect to the Respondent's website described above. The disputed domain name registrants did not comment on the Complainant's request. The Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party; to the contrary, this seems to be the most fair and efficient approach.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 names. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the UBER mark is recognizable within the disputed domain names. The distinctive “flewber” element of the disputed domain names is aurally similar to the UBER mark ([WIPO Overview 3.0](#), section 1.7), and the similarity is reinforced by the content of the associated website, which entails a transportation ridesharing service ordered by mobile app on the Complainant’s well-known model. Other panels have similarly taken account of associated website content to confirm that confusing similarity was presented by design. [WIPO Overview 3.0](#), section 1.15. The Panel also notes that the Respondent’s CEO publicly acknowledged that the choice of the name “Flewber” was a “cheeky wink at Uber”.

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

Accordingly, the Panel concludes that the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 names. 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 names such as those enumerated in the Policy or otherwise. The record shows that the Respondent applied for a FLEWBBER trademark registration but abandoned that application. The Respondent registered companies with the name “Flewber” and presumably has conducted business under that name through the Respondent’s website, although the Respondent has not submitted proof of such actual business in this proceeding. However, these actions cannot be considered legitimate interests in connection with a “bona fide” commercial offering for Policy purposes if they were meant to exploit the Complainant’s UBER marks. The Respondent’s CEO acknowledged in the media interviews quoted above that he meant for consumers to make the connection between “Flewber” and UBER; the company name was intended from the outset to suggest a sort of UBER service for flying.

Thus, while the Respondent could conceivably argue for legitimacy in connection with a commercial offering or demonstrable plans for such use (Policy, paragraph 3(c)(i)) or having been “commonly known” by a corresponding name (paragraph 3(c)(ii)), the Respondent has not come forward to present such arguments and supporting evidence. The available record indicates to the contrary that the Respondent’s choice of name and its business, such as it has been, were in fact illegitimately grounded on exploiting the fame of the Complainant’s mark and falsely suggesting an association with the Complainant.

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 was clearly aware of the Complainant and its UBER marks. The Respondent's CEO publicly acknowledged that the "Flewber" name was meant to be evocative of UBER, just as the Respondent's business model drew on the Complainant's example. While imitation may be the sincerest form of flattery, imitation in domain names risks initial interest confusion, which unfairly takes advantage of another party's reputation (and threatens to diminish it). The 2019 version of the Respondent's website compounded that initial confusion with its inaccurate and misleading description of a "seamless" experience involving the Respondent's app and service and the Complainant's ground transport, purportedly allowing consumers to "UBER to your Flewber". Subsequent references to the Complainant have been more subtle and indirect, making comparisons to the Complainant's model and republishing media references to the Respondent as the UBER of private jet service, for example. But the problem of initial interest confusion remains.

The Panel finds on this record that all of these disputed domain names were meant to be confusingly similar to the UBER marks. In addition to the name "flewber" that appears in all of the disputed domain names, some add somewhat generic terms ("net", "lux") or terms relating to aviation ("fly", "jets", "skies") that do not avoid confusion, given that the Complainant has also provided air transport services and its website includes discussion of future air taxi services. Thus, none of the disputed domain names avoids likely confusion with the Complainant. To the contrary, the record indicates that the Respondent has encouraged comparison and even implicit (false) association with the Complainant. These facts accord with the example of bad faith found in the Policy, paragraph 4(b)(iv): an intentional attempt to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark.

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 names <flewber.com>, <flewberjets.com>, <flewber-luxe.com>, <flewberlux.com>, <flewber.net>, <flewberskies.com>, and <flyflewber.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: November 20, 2024