

EXPERT DECISION

FloQast, Inc. v. A. C.

Case No. DCH2024-0011

1. The Parties

The Claimant is FloQast, Inc., United States of America, represented by Keller Schneider Patent- und Markenanwälte AG, Switzerland.

The Respondent is A. C., United States of America.

2. The Domain Name

The dispute concerns the following domain name <floqast.ch>.

3. Procedural History

The Request was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 3, 2024. On September 4, 2024, the Center transmitted by email to SWITCH, the “.ch” and “.li” registry, a request for verification in connection with the disputed domain name. On September 5, 2024, SWITCH 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 (J.P.) and contact information in the Request. The Center sent an email communication to the Claimant on September 9, 2024, providing the registrant and contact information disclosed by SWITCH, and inviting the Claimant to submit an amendment to the Request. The Claimant filed two amendments to Request on September 10, and 19, 2024.

The Center verified that the Request together with the amended Requests satisfied the formal requirements of the Rules of procedure for dispute resolution procedures for “.ch” and “.li” domain names (the “Rules of Procedure”), adopted by SWITCH, on January 1, 2020.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondent of the Request, and the Dispute resolution procedure commenced on September 20, 2024. In accordance with the Rules of Procedure, paragraph 15(a), the due date for Response was October 10, 2024.

The Respondent has neither filed a Response nor expressed his readiness to participate in a Conciliation in accordance with paragraph 15(d) of the Rules of Procedure.

No Conciliation conference has taken place within the deadline specified in paragraph 17(b) of the Rules of Procedure.

On October 11, 2024, the Center notified the Claimant accordingly, who on October 18, 2024, made an application for the continuation of the dispute resolution proceedings in accordance with paragraph 19 of the Rules of Procedure and paid the required fees.

On October 30, 2024, the Center appointed Daniel Kraus as Expert in this case. The Expert finds that it was properly appointed. In accordance with Rules of Procedure, paragraph 4, the above Expert has declared his independence of the parties.

On November 15, 2024, the Center issued a Procedural Order requesting the Claimant to explain with supporting evidence until November 20, 2024 the date since it is operating in Switzerland. The Respondent was given five (5) working days from the date of the Claimant's submission to the above order to comment.

The Claimant provided the requested information within the deadline. The Respondent did not file a reply.

The decision due date was extended to November 26, 2024.

4. Factual Background

The Claimant, a rising start-up, is a cloud-based finance and accounting operations platform with subsidiaries in Germany and the United Kingdom ("UK"), but none in Switzerland. It has trademarks internationally, including in the European Union ("EU") and in the UK, but none in Switzerland. The Claimant owns and operates the domain name <flogast.com> over which its services are available in numerous countries, including in Switzerland, as Software as a Service. "Flogast" is also the (commercial name) of the Claimant under which it is present on the Internet and actively approaching its Swiss existent and potential customers.

The disputed domain name was registered on July 14, 2024. It leads to a simple pay-per-click landing page which contains a clickable field mentioning that the domain name may be for sale. The Claimant has made an offer to buy the disputed domain name for USD 1,500, offer which has been refused as being "much too low". The disputed domain name was offered for sale to Claimant for an amount between USD 10,000 and 15,000, depending on the answers obtained by the Claimant.

5. Parties' Contentions

A. The Claimant

The Claimant argues that the disputed domain name is identical or confusingly similar to its name (in the meaning of article 8 of the Paris Convention for the Protection of Industrial Property), that this creates a risk of confusion, preventing the Claimant from commercial activities, hence constituting an act of unfair competition according to articles 2 and 3 paragraph d of the Swiss Federal Unfair Competition Act ("UWG"). That such behavior, including the fact of putting the disputed domain name for sale at a price between USD 10,000 and 15,000 is constitutive of bad faith. Based on these reasons, the Claimant requests the transfer of the disputed domain name.

B. The Respondent

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

6. Discussion and Findings

According to paragraph 24 of the Rules of Procedure, the Expert shall grant the Request if the allocation or use of the disputed domain name constitutes a clear infringement of a right in a distinctive sign which the Claimants own under the laws of Switzerland. Paragraph 24(d) of the Rules of Procedure specifies that such clear infringement of an intellectual property right exists when:

- both the existence and the infringement of the claimed right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and
- the Respondent has not conclusively pleaded and proven any relevant grounds for defense; and
- the infringement of the right justifies the transfer or revocation of the disputed domain name, depending on the remedy requested in the request.

A. The Claimant has a right in a distinctive sign under the law of Switzerland

Although the Claimant has established ownership of trademarks in the EU and the UK, it has not established ownership of any trademark registration in Switzerland. However, the Claimant has shown priority of use of the name “Floqast” for its business since 2013 in Switzerland. According to Article 8 of the Paris Convention for the Protection of Industrial Property to which Switzerland is bound, “[a] trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.” In this regard, the Swiss Federal Tribunal has considered, in substance, that a foreign company not registered in the Swiss commercial register enjoys the same protection as an unregistered Swiss company. The scope of such protection covers the right to a name and against unfair competition (see Decision ATF 79 II 305). Therefore, the Expert finds that the Claimant has established a right in its distinctive sign FLOQAST in Switzerland. Accordingly, the Claimant has provided sufficient evidence of a right in a distinctive sign under the law of Switzerland in accordance with paragraph 24(d)(i) of the Rules of Procedure.

B. The allocation or use of the domain name constitutes a clear infringement of a Right in a distinctive sign which the Claimant owns under the law of Switzerland

According to article 29(2) of the Swiss Civil Code, someone injured by a usurpation of their name can bring an action to enjoin such use. This provision also protects the name of corporate legal persons governed by private law, and the Federal Tribunal has further held that the use of someone’s name infringes an interest worthy of protection when such appropriation of the name results in a danger of confusion or deception or when such appropriation is of nature to create in the public’s mind, by an association of ideas, a connection which in fact does not exist (see ATF 128 III 353, recital 4, <montana.ch>).

The disputed domain name is identical to the distinctive sign “Floqast”. The Claimant has shown that the Respondent used the disputed domain name on a pay-per-click landing page, mainly to offer the disputed domain name for sale. Former experts have considered that the attempt to resell a domain name reproducing a distinctive sign to the legitimate holder of that sign at a price higher than the cost of registration may indicate an unfair intention and amount to an act of unfair competition (see *Diadora S.p.A. v. Y. L.*, WIPO Case No. [DCH2023-0001](#)). The Expert finds that such use in the present case infringes an interest worthy of protection, as it constitutes a usurpation of the Claimant’s name according to article 29(2) of the Swiss Civil Code and constitutes an act of unfair competition under Art. 3 para. 1(lit. d) of the UWG, which protects unregistered distinctive signs.

The Respondent has neither pleaded nor proven any relevant grounds for defense.

The Expert therefore holds that this clear infringement of the Claimant’s right justifies the transfer of the disputed domain name.

7. Expert Decision

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the disputed domain name, <floqast.ch>, be transferred to the Claimant.

/Daniel Kraus/

Daniel Kraus

Expert

Dated: November 26, 2024