

ADMINISTRATIVE PANEL DECISION

DISH Network L.L.C. v. hamza mandour
Case No. D2023-3458

1. The Parties

The Complainant is DISH Network L.L.C., United States of America (“United States”), represented by Quarles & Brady LLP, United States.

The Respondent is hamza mandour, Morocco.

2. The Domain Name and Registrar

The disputed domain name <flextv.shop> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2023. On August 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2023, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 16, 2023, 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 amended Complaint on August 17, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on August 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent sent an email communication to the Center on August 23, 2023. The Center sent a Possible Settlement email to the Parties on August 25, 2023, and the Complainant requested to suspend the proceeding on August 31, 2023. The proceeding was suspended on September 4, 2023, for the next 30 days and the Complainant requested Reinstitution of the

proceeding on October 11, 2023. The Center reinstated the proceeding on October 13, 2023. As the Respondent did not submit a formal Response, the Center notified the Parties the Commencement of Panel appointment process on October 23, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 2, 2023. 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is DISH Network L.L.C., a United States company operating in the field of pay-tv broadcasting services, and owning the following United States trademark registration for FLEXTV:

- United States Trademark Registration No. 4,172,891 for FLEXTV, registered on July 10, 2012.

The Complainant provided evidence in support of the above.

According to the evidence filed by the Complainant, the disputed domain name was registered on June 23, 2023, and it redirects to a website in which competing IPTV television broadcasting services are purportedly offered.

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 disputed domain name is identical to its trademark FLEXTV.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the disputed domain name redirects Internet users to a website in which competing IPTV television broadcasting services are purportedly offered.

The Complainant submits that the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and that the use of the disputed domain name to redirect to the

website in which competing IPTV television broadcasting services are purportedly offered creates the impression of a relationship between the Respondent and the Complainant and disrupts the Complainant's business, qualifying as bad faith registration and use.

B. Respondent

The Respondent has made no formal reply to the Complainant's contentions.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

On August 23, 2023, the Center received the following informal email communication from the Respondent:

"Good morning , i don't know any flextv this brand i made this name just because i see it's easier to write and easy to learn and i never sold through the site it's just open like that i can cancel or delete it or change this domain name because I just started".

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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 disputed domain name has been registered and is being used in bad faith.

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 3.0](#), section 1.7.

Based on the available record, the Panel finds the 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.

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

It is also well accepted that a generic Top-Level Domain, in this case ".shop", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

While 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 often impossible 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. 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 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. On the contrary, the use of the disputed domain name for redirecting Internet users to a website in which competing IPTV television broadcasting services are purportedly offered is likely to create confusion with the Complainant’s trademark as to the disputed domain name’s source, sponsorship, affiliation or endorsement.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark FLEXTV in the field of pay-tv broadcasting services is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the disputed domain name redirects to the a website in which competing IPTV television broadcasting services are purportedly offered.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is redirecting the disputed domain name to a website in which competing IPTV television broadcasting services are purportedly offered, creating likelihood of confusion with the Complainant’s trademark as to source, sponsorship, affiliation or endorsement.

Moreover, the Panel considers that the nature of the inherently misleading disputed domain name, which incorporates the Complainant’s trademark FLEXTV in its entirety, further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <flextv.shop> be transferred to the Complainant.

/Fano, Edoardo/

Fano, Edoardo

Sole Panelist

Date: November 16, 2023