



DECISION

Fluke Corporation v. guo liangzhe
Claim Number: FA2203001990461

PARTIES

The Complainant is **Fluke Corporation** (“Complainant”), represented by **William Schultz** of **Merchant & Gould**, Minnesota, United States. The Respondent is **guo liangzhe** (“Respondent”), China.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain name at issue is **<fluketest.com>**, registered with **Xin Net Technology Corporation**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

David L. Kreider, Chartered Arbitrator (UK), as Panelist.

PROCEDURAL HISTORY

The Complainant submitted a Complaint to the FORUM electronically on March 31, 2022; the FORUM received payment on March 31, 2022.

On April 4, 2022, Xin Net Technology Corporation confirmed by e-mail to the FORUM that the **<fluketest.com>** domain name (“Disputed Domain Name”) is registered with Xin Net Technology Corporation and that the Respondent is the

current registrant of the name. Xin Net Technology Corporation has verified that the Respondent is bound by the Xin Net Technology Corporation registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On April 5, 2022, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of April 25, 2022 by which the Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on the Respondent's registration as technical, administrative, and billing contacts, and to postmaster@fluketest.com. Also on April 5, 2022, the Written Notice of the Complaint, notifying the Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to the Respondent via post and fax, to all entities and persons listed on the Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on April 12, 2022.

The Respondent made an additional written submission to the Forum on April 18, 2022, a very brief offer to negotiate, which did not include proof of service on the Complainant as required under Rule 7 of the Forum's Supplemental Rules. Having discretion in the matter, the Panel has not considered the additional unsolicited submission.

On April 18, 2022, pursuant to the Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed David L. Kreider as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

LANGUAGE

The Registration Agreement is in Chinese, a language that the Complainant does not apprehend. The Complainant contends the proceedings should be in English since the Disputed Domain Name has no meaning other than in the English language and resolves to a webpage with the option for an English or Chinese version. The Complainant cites authority for the proposition that, where the domain name has no meaning other than the English term associated with the domain name, the Panel may appropriately determine that the language of the proceeding shall be conducted in English. *Morgan Stanley v. NaShan*, FA1703414 (The Forum, Dec. 14, 2016) (holding proceedings in English language because the registration of a .store domain "primarily targets English-speaking Internet users" and the disputed name contains English words). The Respondent avers that, unless these proceedings are conducted in Chinese, the Respondent will be required to rely on translation software to roughly express his intended meaning in English.

The Panel is familiar with Chinese and has considered the Respondent's submissions as written in their original Chinese. Following Rule 11 and having regard to the circumstances, the Panel has decided in its discretion that the language of these proceedings shall be the English language as requested by the Complainant. All English translations from the original Chinese documents are those of the Panel.

RELIEF SOUGHT

The Complainant requests that the Disputed Domain Name be transferred from the Respondent to the Complainant.

PARTIES' CONTENTIONS

A. Complainant

a. **The Domain Name is Confusingly Similar to the FLUKE Marks (UDRP Policy ¶ 4(a)(i)).**

The Complaint alleges that the Disputed Domain Name fully incorporates Fluke's registered FLUKE mark along with the generic term "test" and top-level domain ".com." The added term "test" adds to the confusion because the Complainant sells testing instrumentation and equipment. *3M Company v. Domain Librarian c/o Orion Foundry (Canada) ulc*, FA1139111 (Nat. Arb. Forum, Feb. 27, 2008) (holding addition of generic term "stethoscopes" in *littmannstethoscopes.info* did not serve to distinguish from 3M's LITTMANN mark); *Gianvito Rossi SRL Unipersonale v. inflatable bouncer, inflatablebouncerforsale.com*, FA1579116 (Nat. Arb. Forum, Oct. 8, 2014) (holding addition of "sale" to trademark insufficient to distinguish mark). The addition of the top-level domain ".com" is immaterial under the Policy. Therefore, the Disputed Domain Name is confusingly similar to Fluke's FLUKE marks.

b. **The Respondent Does Not Have Any Right or Legitimate Interest in the Domain Name (UDRP Policy ¶ 4(a)(ii)).**

The Respondent has no right or legitimate interests in the Disputed Domain Name. The registration of a domain name for the purpose of diverting online traffic premised on consumer confusion, as the Complainant alleges, is not a *bona fide* offering of goods pursuant to Policy ¶ 4(c)(i). Respondent also has no legitimate right to the Domain Name pursuant to Policy ¶ 4(c)(ii) in that it has not received permission to use the FLUKE Marks. Furthermore, the Complaint

avers, the Respondent is not using the mark for any legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii), rather, the Respondent is using the Domain Name to perpetuate a scheme to deceive consumers into believing its website offers legitimate electronic test and measuring instruments and devices and electronic test tool goods under the FLUKE Mark, when it does not. *Ceridian Corp. v. Versata Software, Inc.*, FA 1259927 (Forum June 23, 2009) (finding that a respondent's use of a disputed domain name to direct Internet users to a website which attempts to download computer viruses "failed to create any semblance of a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)").

c. The Domain Name Has Been Registered and Used in Bad Faith (UDRP Policy ¶ 4(a)(iii)).

The Complainant avers that the Respondent has registered and used the Disputed Domain Name in bad faith and registered multiple domain names to perpetuate a scheme to drive traffic to its website located at www.testcenter.net.cn.

The Complaint alleges that Exhibit 7 shows the Respondent's ownership detail associated with the domain names testcenter.com.cn, weixin17.com, flir-fluke.com, fluke-flir.com, and fluketest.com. The Respondent used the Disputed Domain Name to forward consumers who searched for that name to a website that appears to be a FLUKE website and attract consumers to that site who believe they are going to a true FLUKE site. The website prominently used the FLUKE Marks to trick consumers into believing that the content on the site is that of Fluke. After Fluke demanded that the Respondent remove the content, the Respondent removed the forwarding mechanism to the testcenter.net.cn website.

The imagery used in connection with the site made the site appear as though it was a Fluke website, which it was not. The only company that offers electronic test and measuring instruments and devices and electronic test tools in connection with the name FLUKE is the Complainant.

The Respondent's diversion of traffic to competitive product offerings also shows bad faith pursuant to Policy ¶ 4(b)(iii). *David Hall Rare Coins v. Tex. Int'l Prop. Assocs.*, FA 915206 (Nat. Arb. Forum Apr. 9, 2007) (finding that a respondent registered and used a disputed domain name in bad faith pursuant to Policy ¶ 4(b)(iii) where that respondent used the domain name to advertise goods and services of a complainant's competitors, thereby disrupting that complainant's business).

There would be no reason to register a domain name including the term "fluke" in connection with the same unless the Respondent knew of Fluke and its FLUKE brand of electronic test and measuring instruments and devices and electronic test tool goods. The evidence shows the Respondent had actual notice of Fluke's trademark rights in and to the FLUKE Marks at the time the Domain Name was registered. On that basis alone, Respondent's registration of a confusingly similar domain name shows bad faith.

B. Respondent

The Respondent alleges that the Disputed Domain Name was registered on July 19, 2016, has been privately held, and is currently "closed". The Disputed Domain Name was transferred out of the control of any company as early as December 13, 2021. It is unclear why the Complainant raises so many corporate cases and matters in these proceedings, including the so-called "testcenter" company's website and product distribution screen shots, or why it asserts an intention to obtain an unfair advantage.

The Response alleges that the Respondent, guo liangzhe, heads the “testcenter”, a service provider specialized in testing and measurement as well as a distributor of products, all of which are sold by authorized agents of the relevant brand manufacturers through lawful sales channels.

The Respondent acknowledges: “福祿克禁止我们转售相关产品是不符合相关市场原则的”, “Contrary to the relevant market principles, Fluke prohibits us from reselling their products”. We have not seen the relevant documents or information prohibiting such resales, so the resale of branded products does not constitute trademark infringement and infringement of intellectual property rights. This is very different from the supportive attitude of other manufacturers, including keysight, flir, and Agilent.

The Response includes photographs of a Chinese language certificate issued by the Complainant to an “authorized distributorship” in China operating under the name “Fluke Shanghai Corporation”, purporting to authorize the distribution of all Fluke products throughout 16 Chinese provinces and “self-governing districts” for the period January 1, 2020, through December 31, 2020. Another photograph shows a partially redacted value added tax receipt dated March 27, 2019 issued by Jiangsu Province tax authority to Shenzhen City Wei Xin Instrumentation Company Limited (深圳维信仪器仪表有限公司) in connection with the purchase of Fluke brand “computer network equipment” in the total sum of RMB 86,000 (approximately US\$ 13,288 at the prevailing exchange rate). The Response asserts that the certificates are “100%” authentic and were among the first batch of certificates issued by the Complainant. It is “unclear”, the Respondent asserts, why the Complainant seeks in these proceedings to refute and refuse to recognize the certificates issued by it.

The Respondent avers that the ownership of the www.testcenter.net.cn website referenced by the Complainant is related to “the Company”, while the ownership

of the Disputed Domain Name “is a specific individual”, that the relevant “management rights” were transferred on December 13, 2021, and the two no longer have any substantive connection whatsoever.

C. Additional Submissions

The Respondent made an additional written submission to the Forum on April 18, 2022, which did not include proof of service on the Complainant as required under Rule 7 of the Forum’s Supplemental Rules. As noted above, the Panel has not considered the additional unsolicited submission.

FINDINGS

The Complainant’s FLUKE trademark was registered with the U.S. Patent and Trademark Office on April 7, 1998, and assigned Registration Number 2148673. The Mark has been used in commerce since at least as early as March of 1961.

The English mark FLUKE was registered in P.R. China on February 13, 2001, and in Chinese 福禄克 on October 30, 2006.

The website to which the Disputed Domain Name resolves is inactive and reads: “The website is currently inaccessible ... the website has not obtained an ICP filing in accordance with the law of the Ministry of Industry and Information Technology of the People’s Republic of China”. The Complainant provides a screenshot showing that the Disputed Domain Name is offered for sale on the HugeDomains.com website for US\$ 2,195.

Exhibit 7 to the Complaint reflects that as at August 5, 2019, the domains “www.testcenter.com.cn”, as well as domains “www.weixin17.com”; “www.flir-fluke.com”; “www.fluke-flir.com”; and the Disputed Domain Name “www.fluketest.com” were all registered to Shenzhen City Wei Xin Instrumentation Company Limited (深圳维信仪器仪表有限公司).

The Response is in incorrect form and does not comply with the Rule 5(c)(viii) requirement that the Respondent certify that the Response is complete and accurate and is not being presented for any improper purpose.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The Disputed Domain Name is confusingly similar to the Complainant's registered FLUKE mark. The addition of the generic term "test" does not distinguish the domain name, given that the Complainant's core business is the manufacture and sale of testing equipment and instrumentation. The addition of a generic term and a gTLD to a mark does not negate any confusing similarity between a disputed domain name and a mark under Policy ¶ 4(a)(i). *Dell Inc. v. pushpender chauhan*, FA 1784548 (Forum June 11, 2018) ("Respondent merely adds the term 'supports' and a '.org' gTLD to the DELL mark. Thus, the Panel

finds Respondent's disputed domain name is confusingly similar to Complainant's DELL mark per Policy ¶ 4(a)(i).").

The Panel finds that the first element of Policy Paragraph 4(a)(i) is satisfied.

Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent is not ordinarily known by the Disputed Domain Name and is using the FLUKE mark without authorization. The Complainant alleges that the Respondent is using the Domain Name to perpetuate a scheme to deceive consumers into believing its website offers legitimate electronic test and measuring instruments and devices and electronic test tool goods under the FLUKE Mark, when it does not. *Ceridian Corp. v. Versata Software, Inc.*, FA 1259927 (Forum June 23, 2009).

The Complainant having established *prima facie* that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), the burden then shifts to the Respondent to show it does have rights or legitimate interests. *Advanced International Marketing Corporation v. AA-1 Corp.*, FA 780200 (Forum Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); see also *Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (Forum Apr. 12, 2014) ("Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests").

The Complainant argues that the Respondent does not use the Disputed Domain Name for any *bona fide* offering of goods or services or legitimate non-commercial or fair use. Rather, the Respondent uses the domain to redirect

users to the Respondent's own website where it offers competing goods that are identical to those offered by the Complainant.

The use of a disputed domain name to divert users and offer competing goods for sale does not constitute a *bona fide* offering of goods or services or legitimate non-commercial or fair use under Policy ¶¶ 4(c)(i) or (iii). *Invesco Ltd. v. Premanshu Rana*, FA 1733167 (Forum July 10, 2017) ("Use of a domain name to divert Internet users to a competing website is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use."); see also *General Motors LLC v. MIKE LEE*, FA 1659965 (Forum Mar. 10, 2016) (finding that "use of a domain to sell products and/or services that compete directly with a complainant's business does not constitute a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii).").

Here, the Complainant provides a screenshot showing prior to the commencement of these administrative proceedings, the Disputed Domain Name forwarded users to the <testcenter.net.cn> website which offers products identical to those the Complainant offers under its FLUKE mark.

The Panel finds that the Respondent is not using the Disputed Domain Name for a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate non-commercial or fair use under Policy ¶ 4(c)(iii).

The second element under Policy Paragraph 4(a)(ii) is satisfied.

Registration and Use in Bad Faith

The Complainant argues that the Respondent registered and uses the Disputed Domain Name in bad faith because the Respondent engaged in a pattern of bad

faith registrations and has registered multiple domain names incorporating the Complainant's FLUKE mark. The registration of multiple infringing domain names incorporating a complainant's mark is evidence of a pattern of bad faith under Policy ¶ 4(b)(ii). *N.H. Sweepstakes Comm'n v. We Web Well, Inc.*, FA 197499 (Forum Nov. 3, 2003) (finding that the complainant's submission of WHOIS evidence that listed the respondent as the registrant of other domain names incorporating third-party trademarks was sufficient to establish that the respondent had a pattern of registering and using domain names in bad faith pursuant to Policy ¶ 4(b)(ii)); *see also United States Postal Service v. Yongkun Wang*, FA 1788170 (Forum July 11, 2018) ("Complainant contends that Respondent is a serial cybersquatter as evidenced by its registering four separate domain names all incorporating Complainant's USPS mark. Therefore, the Panel finds that the Respondent registered and is using the disputed domain names in bad faith under Policy ¶ 4(b)(ii).").

Here, the Complainant provides evidence of other domain names the Respondent has registered, which includes <flir-fluke.com> and <fluke-flir.com>. Accordingly, the Panel finds that the Respondent has engaged in a pattern of bad faith registrations.

Additionally, the Complainant argues that Respondent registered and uses the Disputed Domain Name in bad faith since the Respondent diverts Internet users landing on the Disputed Domain Name to its competing website. Using a disputed domain name to redirect users to a respondent's website where it offers goods for sale that directly compete with those offered by a complainant is evidence of bad faith disruption of a complainant's business under Policy ¶ 4(b)(iii) and an attempt to attract users for commercial gain under Policy ¶ 4(b)(iv). *ZIH Corp. v. ou yang lin q*, FA1712001761403 (Forum December 29, 2017) (Finding bad faith where Respondent used the infringing domain name to disrupt Complainant's business by diverting Internet users from Complainant's

website to Respondent's website where it offered competing printer products); *see also OneWest Bank N.A. v. Matthew Foglia*, FA1503001611449 (Forum Apr. 26, 2015) (holding that the respondent's use of the disputed domain name to direct Internet users to a website which competed with the complainant was evidence of bad faith pursuant to Policy ¶ 4(b)(iv)).

The Complainant contends the Respondent had actual knowledge of the Complainant's rights in the FLUKE mark based on the Respondent's use of the Complainant's product images. Following Policy ¶ 4(a)(iii), actual knowledge of a complainant's trademark rights is sufficient to establish bad faith and can be demonstrated by the use the respondent makes of the domain name. *JUUL Labs, Inc. v. han shun fei*, FA 1916071 (Forum Nov. 11, 2020) ("Respondent's prior knowledge is evident from the notoriety of Complainant's trademark, from Respondent's use of Complainant's trademark on Respondent's <juu1vapor.com> website, and from Respondent's offering of unauthorized JUUL products and/or competitive products for sale on such website. . . . Respondent's prior knowledge of Complainant's trademark further indicates that Respondent registered and used the <juu1vapor.com> domain name in bad faith pursuant to Policy ¶ 4(a)(iii).").

The Respondent candidly admits in the Response: "Fluke prohibits us from reselling their products", and that the Respondent heads the "testcenter", a service provider specialized in testing and measurement as well as a distributor of competing products. Accordingly, the Panel finds that the Respondent had actual knowledge of the Complainant's Mark and registered the Disputed Domain Name in bad faith.

Although the evidence reflects that the Respondent's website at the Disputed Domain Name <fluketest.com> is currently inactive, the Panel accepts the Complainant's evidence that the Disputed Domain Name was until relatively

recently one of several infringing domains registered under a single corporate identity linked to a website located at URL www.testcenter.net.cn which, the Panel notes, currently offers for sale FLUKE branded products along with those of competitors. The Panel finds unpersuasive the Respondent's bare assertion that the Respondent "no longer has any substantive connection" with the corporate owner of the www.testcenter.net.cn domain or the scheme to misdirect Internet users to sites offering competing goods.

Based on the totality of the circumstances shown above, the Panel finds that the Disputed Domain Name was registered and is being used in bad faith.

Accordingly, the third element under Policy Paragraph 4(a)(iii) is satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the **<fluketest.com>** domain name be **TRANSFERRED** from the Respondent to the Complainant.

David L. Kreider, Panelist

Dated: April 23, 2022