

DISPUTE RESOLUTION SERVICE

D00018855

Decision of Independent Expert

MERIAL

and

Evgeni Lubenov

1. The Parties:

Complainant: MERIAL
29 Avenue Tony Garnier
LYON
69007
France

Respondent: Evgeni Lubenov
j.k. Lulin 117, vh. B, et. 1, ap. 18
Sofia
Sofia
1000
Bulgaria

2. The Domain Name(s):

getfrontlinecat.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as being of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

03 May 2017 19:09 Dispute received
04 May 2017 08:55 Complaint validated
04 May 2017 08:58 Notification of complaint sent to parties
23 May 2017 02:30 Response reminder sent
26 May 2017 11:24 No Response Received
26 May 2017 11:25 Notification of no response sent to parties
08 June 2017 02:30 Summary/full fee reminder sent
08 June 2017 11:32 Expert decision payment received

4. Factual Background

I find the following facts and matters proved on the basis of the materials and submissions made by the Complainant and they form the basis of my decision:

- i. The Complainant first started producing and selling its range of products aimed at pets suffering from fleas and ticks in 1994.
- ii. It markets its products under the principal name of "FRONTLINE", but this can be combined to differentiate products, such as "FRONTLINE PLUS" and "FRONTLINE COMBO".
- iii. It owns registered trade marks in these names effective in the UK and in the EU.
- iv. The active ingredients vary as between the product lines, but include fipronil and methoprene.
- v. The Complainant has engaged in advertising and educational campaigns over a number of years aimed at the general public, the trade press and veterinary professionals and has become well known in this particular market sector.
- vi. While it is not specified exactly when the Domain Name started to be used actively as an online shop, it was used for the purpose of providing at least some products which looked similar to the Complainant's products.
- vii. In fact, however, these products were fakes and did not contain the active ingredients found in the Complainant's genuine products, but rather other ingredients which might be harmful if applied to animals.
- viii. Since the Complainant complained to the Respondent, the Domain Name does not have any active website selling any products.

5. Parties' Contentions

The Complainant makes the following submissions:

- i. The Complainant owns trade marks in relation to its products:
 - a. UK trade mark registration No. 1557026 “FRONTLINE”;
 - b. UK trade mark registration No. 3090065 “FRONTLINE PLUS”;
 - c. EU trade mark registration No. 1966787 “FRONTLINE”;
 - d. International registration (UK) No. 771092 “FRONTLINE COMBO”;
- ii. The Complainant’s range of products is the UK’s leading brand, with high volumes of sales.
- iii. The Complainant has invested in extensive marketing and educational activities concerning fleas in pets: advertisements have appeared in published media as well as on television.
- iv. The Complainant has extensive goodwill and reputation in its “FRONTLINE” brand in the UK.
- v. The Domain Name is an Abusive Registration as:
 - a. It is a blocking registration;
 - b. It was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, was unfairly detrimental to the Complainant’s Rights; and
 - c. It has been used in a manner which has been unfairly detrimental to the Complainant’s Rights.
- vi. With regard to the latter aspect, the Domain Name has been used for the purpose of an online shop selling counterfeit goods purporting to be those of the Complainant.
- vii. The Respondent was not authorised to use the Complainant’s Rights.
- viii. The sale of counterfeit goods is a clear threat to the Complainant’s business.
- ix. The Respondent’s usage of the Domain Name has infringed the Complainant’s trade marks.
- x. The Complainant regulates its supply chain, and does not sell products directly to the public and relies on being able to maintain standards as among its various resellers.
- xi. The Complainant has been successful in previous Decisions under the DRS Policy.

The Respondent made no response and submitted no evidence.

6. Discussions and Findings

Rights

Rights are defined in the DRS Policy to mean “*rights enforceable by the Complainant, whether under English Law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*”. Paragraph 2.1.1 provides that the Complainant must prove that it “*has Rights in respect of a name or mark which is identical or similar to the Domain Name*”. The standard of proof is on the balance of probabilities (paragraph 2.2 of the DRS Policy).

Having regard to the trade mark registrations, copies of which the Complainant has provided in its evidence, I conclude that the Complainant has Rights in “FRONTLINE”.

The Domain Name uses this element as a central feature, preceded by “get” and followed by “cat”. The .co.uk suffix can be disregarded for present purposes. Given that the Complainant’s Rights relate to treatments for, inter alia, cats, and “get” is an ordinary word meaning “acquire”, I have no doubt that the Complainant has shown that it has Rights in respect of a mark which is similar to the Domain Name.

Abusive Registration

An Abusive Registration is defined in the DRS Policy as *“a Domain Name which either (i) was registered or otherwise acquired in a manner which, at the time of when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; or (ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights”*.

Paragraph 2.2.2 of the DRS Policy requires the Complainant to show that the *“Domain Name, in the hands of the Respondent, is an Abusive Registration”*.

Again, the standard of proof is on the balance of probabilities (paragraph 2.2 of the DRS Policy).

Paragraph 5 of the DRS Policy sets out a number of non-exhaustive factors which “may” be evidence that the Domain Name is an Abusive Registration. The Complainant has relied on a number of separate grounds and has provided evidence which is relevant to the following paragraphs.

Paragraph 5.1.1.3

This requires evidence to show *“circumstances that the Respondent has registered the Domain Name primarily ... for the purpose of unfairly disrupting the business of the Complainant.”*

Having had regard to the evidence of the purchase showing the sale of counterfeit goods through the online shop hosted at the Domain Name, it appears to me on the balance of probabilities, in the absence of any explanation from the Respondent, that the primary purpose for registering the Domain Name was so that it could attract members of the public looking for the Complainant’s products, in particular members of the public which owned cats. There is no other explanation that I can see for the use of “frontline” and “cat” in the Domain Name. The addition of “get” is an invitation to members of the public to acquire products thinking that they are the Complainant’s.

Paragraph 5.1.2

This requires evidence to show *“circumstances that the Respondent is using ... the Domain name in a way which ... is likely to confuse people or businesses into*

believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant”.

This relates to the establishment of the Complainant’s distribution network. I accept that it makes no sales direct to the general public, but maintains a network of approved resellers. The existence of alternative methods of supply to the general public, especially where there is the risk of the supply of counterfeit products, is a potentially major disruption to the Complainant’s way of doing business.

Given the inclusion of the Complainant’s trade mark “FRONTLINE” in the Domain Name, and the use of the Domain Name to host a transactional website selling at least some counterfeit products, I conclude on the balance of probabilities that the Respondent has used the Domain Name in such a way as would be likely to confuse people into thinking that there is some sort of connection with the Complainant or authorisation by the Complainant to sell its products.

Other grounds

The Complainant alleged that the Domain Name was a blocking registration (paragraph 5.1.1.2 of the DRS Policy) but I cannot see any evidence supporting this.

Evidence that the Domain Name is not an Abusive Registration

In the absence of any submissions or evidence from the Respondent, I nonetheless also considered whether there might be some grounds on which it could show that the Domain Name was not an Abusive Registration.

Paragraph 8 of the DRS Policy sets out a non-exhaustive list of factors, the closest of which are paragraphs 8.1.1.1 and 8.1.2. Having looked at all the evidence in this case, I concluded that the Respondent was not making any sort of genuine offering of goods or that his use was fair.

I therefore find that there is no evidence supporting a finding that this is not an Abusive Registration.

7. Decision

I direct that the Domain name be transferred to the Complainant.

Signed: Richard Stephens

Dated: 30 June 2017