



DECISION

Phusion Projects, LLC v. Joe Polakowski

Claim Number: FA2607002233354

PARTIES

Complainant is **Phusion Projects, LLC** ("Complainant"), represented by **Robert Leighton** of **Goldberg Kohn Ltd.**, Illinois, USA. Respondent is **Joe Polakowski** ("Respondent"), represented by **Austin Murray** of **Murray Law and Technology Group, LLC**, Ohio, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<fourlokoofriday.com>**, registered with **Cloudflare, Inc.**

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.

Alan L. Limbury, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to FORUM electronically on July 17, 2026. FORUM received payment on July 17, 2026.

On July 19, 2026, Cloudflare, Inc. confirmed by e-mail to FORUM that the <fourlokoFriday.com> domain name is registered with Cloudflare, Inc. and that Respondent is the current registrant of the name. Cloudflare, Inc. has verified that Respondent is bound by the Cloudflare, Inc. 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 July 20, 2026, FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of August 10, 2026 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@fourlokoFriday.com. Also on July 20, 2026, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on August 7, 2026.

On August 7, 2026, pursuant to Complainant's request to have the dispute decided by a single-member Panel, FORUM appointed Alan L. Limbury as Panelist.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant Phusion Projects, LLC, is the owner of all rights in and to the famous FOUR LOKO trademark in the United States and other countries. It operates the website at “www.fourloko.com”.

Respondent’s domain name <**fourlokofriday.com**> is confusingly similar to Complainant's trademark.

Respondent has no rights or legitimate interests in the domain name <**fourlokofriday.com**>. On information and belief, Respondent is not commonly known by “Four Loko.” Four Loko is an arbitrary term when

used in connection with Complainant's products and has no meaning other than as a means to identify Complainant. Respondent is not a licensee of Complainant nor is Respondent otherwise authorized to use the FOUR LOKO mark for any purpose. The domain name does not resolve to any website. This is evidence that Respondent has not made a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of the domain name.

The <**fourloko friday.com**> domain name was registered and is being used by Respondent in bad faith. Upon information and belief, Respondent is using the domain name with the intention of profiting from and exploiting Complainant's FOUR LOKO mark. The domain name does not resolve to any website. A respondent's failure to make active use of a confusingly similar domain name is evidence of bad faith registration and use under Policy ¶ 4(a)(iii). The only possible use of the domain name by Respondent is attempting to attract Internet users to its website "by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement" of Respondent's website and products. See Policy ¶ 4(b)(iv). Moreover, the very nature of Respondent's registration evidences bad faith. FOUR LOKO is a distinctive, famous trademark and has been for many years, well before Respondent registered the domain name at issue. Due to the fame and notoriety of the FOUR LOKO trademark, Respondent had actual or

constructive knowledge of Complainant's rights in its FOUR LOKO mark prior to the registration of the domain name. Because the domain name begins with and incorporates the entirety of Complainant's well-known mark, there is no conceivable non-infringing use of this domain name.

B. Respondent

Complainant bears the burden of proving all three elements of Policy ¶ 4(a). Respondent does not contest the first. Respondent respectfully submits that Complainant has failed to carry its burden on the second and third, and that the Complaint should be denied.

Complainant is a large beverage company. Respondent is an individual who, for the past two years, has hosted a private party at his house on the Friday after Thanksgiving. He and his friends drink Four Loko. They call the evening "Four Loko Friday." On July 2, 2026, Respondent paid \$11.22 to register <fourlokofriday.com> so that he could build a small private page to collect RSVPs and head counts for that party, because organizing it by group text had become unmanageable. Fifteen days later, before he had built anything, Complainant filed this Complaint.

Respondent does not contest that the <fourlokofriday.com> domain name is confusingly similar to Complainant's mark.

Respondent has rights and legitimate interests in the domain name. Policy ¶ 4(c)(iii) provides that a respondent demonstrates rights or legitimate interests where he is “making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” The circumstances in ¶ 4(c) are illustrative, not exhaustive.

Respondent's use satisfies every part of that provision. The intended use is noncommercial in the most literal sense: a free party for personal friends, paid for out of pocket, with no admission charge, no sales, no advertising, and no revenue of any kind. There is no intent for commercial gain because there is no commerce. There is no misleading diversion of consumers because there are no consumers; the intended audience is a private list of invitees who already know exactly what the page is for. And there is no tarnishment: the gathering is a private social occasion among adult friends in Respondent's own home. Respondent does not claim to be commonly known as Four Loko. The use of registrar–default privacy on a personal registration is unremarkable and, standing alone, is not evidence of anything.

Complainant has not proven that the domain name was registered and is being used in bad faith. None of the four circumstances in Policy ¶ 4(b) is present.

Under ¶ 4(b)(i), there is no evidence that Respondent registered the domain name primarily to sell, rent, or transfer it to Complainant or a competitor for valuable consideration in excess of out-of-pocket costs. Respondent paid \$11.22, has never offered the domain name to anyone, has never received an offer, and has never contacted Complainant. Complainant does not allege otherwise.

Under ¶ 4(b)(ii), there is no pattern of conduct preventing trademark owners from reflecting their marks in domain names. Respondent has never registered any other domain name incorporating a trademark belonging to Complainant or any other party. Complainant does not allege a pattern. Nor is Complainant prevented from reflecting its mark: it owns and operates <fourloko.com>, as its own Exhibit 4 shows.

Under ¶ 4(b)(iii), Respondent is not a competitor of Complainant and did not register the domain name to disrupt Complainant's business. Complainant does not allege that Respondent is a competitor.

Under ¶ 4(b)(iv), Respondent has not used the domain name to attract Internet users to any website for commercial gain by creating a likelihood of confusion as to source, sponsorship, affiliation, or endorsement. There is no website, there are no Internet users being attracted anywhere, and there is no commercial gain. Complainant's assertion that this is "the only possible use" of the domain name is not evidence; it is speculation, and the sworn record refutes it. Respondent has never suggested, stated, or implied any sponsorship, affiliation, or endorsement by Complainant, and has never held himself out as authorized by Complainant.

The passive holding doctrine articulated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (Feb. 18, 2000), does not apply on these facts. Respondent concedes that FOUR LOKO is well known. Respondent has provided a sworn affidavit describing the contemplated use in detail, corroborated by messages predating the Complaint by twenty months. Respondent registered the domain name in his own name using the registrar's default privacy setting, was promptly identified by Cloudflare, and has appeared in this proceeding. Respondent's contact details are accurate. Complainant used them to serve him. A private RSVP page for an invitation-only house party is both plausible and legitimate, and it is what the record shows.

The passive holding inference exists to prevent a registrant from insulating an abusive registration behind inactivity. It cannot sensibly be applied to a registrant who has been given fifteen days and has come forward with a documented, plausible, noncommercial purpose.

Respondent readily admits he knew of the FOUR LOKO product. He drinks it, buys it at retail, and named a party after it. Respondent's knowledge of FOUR LOKO is the innocent explanation for the name, not evidence of a bad motive: he and his friends drink the product on a Friday, and that is what they call the evening. A private RSVP page for an invitation-only house party, hosted at cost, never advertised, and never monetized, is a conceivable non-infringing use. It is also the documented, sworn, actual use for which the domain name was registered, evidenced by text messages predating the Complaint by twenty months.

Respondent respectfully requests that the Panel deny the remedy requested in the Complaint and decline to order the transfer of the domain name <fourloko friday.com>.

FINDINGS

Complainant has failed to establish all the elements entitling it to relief.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and 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

Complainant has shown that it has rights in the mark FOUR LOKO, including USPTO Registration No. 4,428,131, registered on November 5,

2013, for *inter alia* flavored alcoholic beverages except beers, in International Class 33.

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 3.1, ¶ 1.7.

The Panel finds Respondent's <fourlokoFriday.com> domain name to be confusingly similar to Complainant's FOUR LOKO mark, only differing by the addition of the word "Friday", which is insufficient to distinguish the domain name from Complainant's mark. The inconsequential ".com" generic top-level domain ("gTLD") may be ignored under this element. See *Rollerblade, Inc. v. Chris McCrady*, D2000-0429 (WIPO June 25, 2000).

Complainant has established this element.

Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall

demonstrate Respondent's rights or legitimate interests to a domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The <fourlokoFriday.com> domain name was registered on July 2, 2026, several years after the registration of Complainant's FOUR LOKO mark. It does not resolve to an active website.

Respondent has shown that, before any notice to Respondent of the dispute, Respondent made demonstrable preparations to use a name

corresponding to the domain name in connection with a *bona fide* offering of services to his friends. Further, that Respondent is making a legitimate noncommercial and fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish Complainant's trademark. Accordingly, the Panel finds that Respondent has rights and legitimate interests in respect of the domain name.

Complainant has failed to establish this element.

Registration and Use in Bad Faith

Paragraph 4(a)(iii) of the Policy is expressed in the conjunctive: “the domain name has been registered and is being used in bad faith” and Paragraph 4(b) sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii), namely:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The circumstances set out above in relation to the second element satisfy the Panel that although Respondent was fully aware of Complainant and its FOUR LOKO mark when Respondent registered the <fourlokofriday.com> domain name, Respondent has not registered or used the domain name in bad faith.

As to whether Respondent acted in bad faith by using a privacy protection service to hide its WHOIS registration data, as noted in WIPO Overview 3.0, section 3.6, "there are recognized legitimate uses of privacy and proxy registration services", and the circumstances in which such services are used can however impact a panel's assessment of bad faith. As is widely known, the use of a privacy or proxy registration service is a common practice adopted by many legitimate businesses and individuals to protect against spam, identity theft, and other security risks. Absent any evidence showing that such privacy was employed specifically to

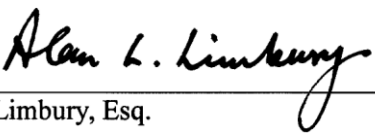
conceal wrongful conduct or to prevent Complainant, the trademark owner, from identifying the registrant, Respondent's use of a privacy service does not support a finding of bad faith.

Complainant has failed to establish this element.

DECISION

Complainant having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <fourlokoFriday.com> domain name **REMAIN WITH** Respondent.



Alan L. Limbury, Esq.
Arbitrator

Alan L. Limbury, Panelist

Dated: August 11, 2026