

## **ADMINISTRATIVE PANEL DECISION**

Frankie Shop LLC v. Bgeew Aferg  
Case No. D2022-3619

### **1. The Parties**

Complainant is Frankie Shop LLC, United States of America (“United States”), represented by Coblence Avocats, France.

Respondent is Bgeew Aferg, China.

### **2. The Domain Name and Registrar**

The disputed domain name <frankieshopsale.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 2, 2022, 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 (Whois Agent, Domain Protection Services, Inc., United States) and contact information in the Complaint. The Center sent an email communication to Complainant on October 4, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on October 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 31, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on November 4, 2022. 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.

#### 4. Factual Background

Complainant, Frankie Shop LLC, is an American company specialized in the sale of clothing and clothing accessories. Complainant provides goods and services for the clothing market internationally.

Complainant, either directly or through its director, owns a portfolio of trademark registrations internationally containing the word mark FRANKIE SHOP. Some examples of Complainant's trademark registrations can be found below:

Registration No.	Trademark	Jurisdictions	International Classes	Date of Registration
4338335	FRANKIE SHOP	France	3, 4, 9, 14, 16, 18, 25	June 9, 2017
5147070	FRANKIE SHOP	United States	35	February 21, 2017

Complainant is well-known around the world for the trademark FRANKIE SHOP, which is used to name Complainant's business of clothing articles and accessories. Complainant also claims rights in the trademark THE FRANKIE SHOP.

The disputed domain name was registered on March 23, 2022, and resolves to a webpage which contains Complainant's trademark FRANKIE SHOP, and imagery of original products provided by Complainant as well as Complainant's website design.

#### 5. Parties' Contentions

##### A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to its trademarks FRANKIE SHOP and THE FRANKIE SHOP, since it fully incorporates Complainant's trademark FRANKIE SHOP and is closely similar to THE FRANKIE SHOP.

Complainant affirms that Respondent creates confusion, considering especially that the disputed domain name uses the trademark FRANKIESHOP in its entirety with the addition of the word "sale" – which would not avoid a confusing similarity between the disputed domain name and Complainant's trademark.

Therefore, according to Complainant, the disputed domain name is confusingly similar to Complainant's trademarks, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademarks FRANKIE SHOP and THE FRANKIE SHOP as a domain name, nor is Respondent associated with Complainant and its business. Complainant observes that Respondent tries to impersonate Complainant on the website, which resolves from the disputed domain name, in which Respondent supposedly provides products containing the

trademark THE FRANKIE SHOP for consumers at a substantial discount, who will most likely believe that these are services linked to Complainant.

Furthermore, Complainant notes that the website hosted by the disputed domain name presents the architecture and design of Complainant's original websites.

This way, Complainant states that such use cannot be the basis for a *bona fide* use of the disputed domain name, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules would have been fulfilled.

Finally, Complainant indicates that (i) Respondent is intentionally diverting costumers into the website hosted by the disputed domain name through the confusion caused by the unauthorized use of the trademarks THE FRANKIE SHOP and FRANKIE SHOP; (ii) Respondent knew or should have known of Complainant's trademark and unregistered rights; (iii) the website hosted by the disputed domain name reproduces Complainant's prior trademarks, as well as the architecture of its genuine website, photographs, and products' names used on the referred website; and (iv) Respondent views to obtain commercial gain from such irregular activity.

Thus, the requirements for the identification of a bad faith registration and use of the disputed domain name would have been met, thus fulfilling paragraph 4(a)(iii) of the Policy and paragraph 3(b)(ix)(3) of the Rules.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

### **A. Identical or Confusingly Similar**

Complainant has duly proven that it owns registered trademark rights for FRANKIE SHOP, and that the disputed domain name is constituted by the trademark FRANKIE SHOP in its entirety with the sole addition of the word "sale".

The addition of the word "sale" does not prevent a finding of confusing similarity with Complainant's trademark FRANKIE SHOP – since the well-known trademark FRANKIE SHOP is recognizable in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark FRANKIE SHOP, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile the overall burden of proof in UDRP proceedings is on 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, Complainant is deemed to have satisfied the second element."

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* offering of goods or services that could demonstrate legitimate interests, since the evidence shows that the disputed domain name resolves to a website in which Respondent tries to impersonate Complainant and supposedly sell Complainant's products at steep discounts, as duly proven by Exhibit F annexed to the Complaint. In this regard, the Panel also notes that the inherently misleading nature of the disputed domain name, incorporating the Complainant's well-known trademark and a descriptive term with an inherent Internet connotation, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's well-known trademark FRANKIE SHOP, plus the addition of the word "sale". The Panel finds that it was duly demonstrated that Respondent was aware of Complainant's rights to the trademarks FRANKIE SHOP at the time of the registration – as Complainant enjoys an international reputation with the use of the referred trademark.

With that in sight, the Panel finds that Respondent was aware of Complainant's rights to the well-known trademarks FRANKIE SHOP, and registered the disputed domain name with the intention of attracting Internet users in search of Complainant's authentic goods and services.

In addition, the registration of the disputed domain name in the present circumstances allows a finding of bad faith registration and use, since the evidence indicate that Respondent uses the disputed domain to impersonate Complainant's business and supposedly sell products under the Complainant's trademarks. As concluded by a UDRP panel in *All-Clad Metalcrafters LLC v. Eugene Preston*, WIPO Case No. [D2021-0799](#), an attempt to impersonate a complainant by using its registered trademark and allegedly offering its products/services is indicative of bad faith.

The Panel finds that the circumstances of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering especially that (i) Respondent tries to obtain undue profit by impersonating Complainant's business, by using the trademark FRANKIE SHOP and offering

Complainant's supposedly original products for sale; and (ii) the trademark FRANKIE SHOP are well-known internationally, and Respondent most likely knew (or should have known) its existence, taking advantage of the confusion caused on the public by its use in the disputed domain name.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

## **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 <frankieshop.com> be transferred to Complainant.

*/Gabriel F. Leonardos/*

**Gabriel F. Leonardos**

Sole Panelist

Date: November 16, 2022