

ADMINISTRATIVE PANEL DECISION

Frigol S.A. v. duke odili
Case No. D2022-4823

1. The Parties

The Complainant is Frigol S.A., Brazil, represented by Opice Blum, Brazil.

The Respondent is duke odili, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <frigolsa.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022, 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 amendment to the Complaint on December 21, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 9, 2023.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on February 14, 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.

4. Factual Background

The Complainant Frigol S.A. is a food company specialized in an animal food in Brazil. It started its activity in 1970 and having filed the application for the registration of the trademark "FRIGOL" in Brazil in August 1995. It is exporting to more than 60 countries in the world. The Complainant is the owner of the following trademark registration among the others:

- Brazilian trademark registration No. 818676965 FRIGOL (design) filed on August 03, 1995, and registered on May 26, 1998, covering goods in class 29.

The Complainant owns the domain name "www.frigol.com.br" which resolves to its official website.

The disputed domain name was registered on July 11, 2022, and at the time of the decision it resolves to an inactive website. Before the filing of the Complaint, the disputed domain name resolved to a website reproducing the Complainant's trademark and displaying food (meat products) in its first page. The disputed domain name is being used to impersonate the Complainant in a false corporate seal, along with false accounts and signature.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar, and at the same time, incorporating the Complainant's well-known trademark FRIGOL and that the addition of the acronym SA refers to "Sociedade Anônima", the equivalent in Portuguese for a "joint-stock company" which is a descriptive term that does not prevent the association between the disputed domain name and the Complainant's trademark.

The Complainant considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name, mainly because the Complainant has neither licensed nor otherwise authorized the Respondent to use its marks or to apply for or use any domain name incorporating the trademark FRIGOL.

The Complainant further asserts that the Respondent is well aware of the Complainant's trademark as the disputed domain name leads to a website showing a food and meat products within which three email addresses containing the disputed domain name are used. The Complainant contends that the physical address used in the said website is also identical to the Complainant's official address and that a client of the Complainant received a letter requesting the payment of an important amount where the disputed domain name address is used.

Therefore, the Complainant states that the use of the disputed domain name for illegal and fraudulent activity is a clear indication that the disputed domain name has been registered and used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove the followings:

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A trademark registration provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

As indicated above, the Complainant holds several trademark registrations for the trademark FRIGOL.

The disputed domain name integrates the Complainant's FRIGOL trademark in its entirety. The disputed domain name adds to the registered FRIGOL trademark the word "SA" which is an abbreviation referring to "Sociedade Anônima", the equivalent in Portuguese for a "joint-stock company". This addition does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8.

As regards the generic Top-Level Domain ".com", it is typically disregarded under the confusing similarity test under the Policy.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The onus is on the Complainant to make out at least a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts the Complainant's submissions that the Respondent does not appear to be known by the disputed domain name, has not used, or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, is not making a legitimate noncommercial or fair use of the disputed domain name, and has no consent from the Complainant to use its trademark.

The Respondent has not filed a Response.

Furthermore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Panels have moreover held that the use of a domain name for illegal activity (*e.g.*, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

The Complainant has made out its *prima facie* case under this element of the Policy and the Respondent has failed to rebut it.

Accordingly, the Complainant succeeded in relation to the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. The Panel finds that the Respondent has registered and used the disputed domain name for fraudulent and illicit activity.

The Complainant's trademark was registered for not less than 27 years at the time of the registration of the disputed domain name. The Panel notes that the disputed domain name was previously redirected to website displaying the Complainant's activities where there is picture of meat product which corroborates the fact that the Respondent has the Complainant's trademark in mind at the time of its registration.

As to the bad faith use, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark. The Respondent's use of three email addresses containing the disputed domain name as well as the physical address which is identical to the Complainant's official address in the said website, is clear indication of fraudulent and illicit intention activity which may cause a serious financial damage to internet users and to the Complainant, par ricochet. In this respect, the Panel finds that the evidence which is submitted by the Complainant constitutes a plausible and convincing evidence showing the fraudulent activity of the Respondent which may cause serious damage to the Complainant and its clients.

Therefore, in view of cumulative circumstances, the Panel finds that the requirement of registration and use in bad faith under paragraph 4(a)(i) of the Policy has been met.

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 <frigolsa.com> be transferred to the Complainant.

/Emre Kerim Yardimci/

Emre Kerim Yardimci

Sole Panelist

Date: February 28, 2023