

ADMINISTRATIVE PANEL DECISION

Frankie Shop LLC v. Jenna Staggs
Case No. D2023-3219

1. The Parties

Complainant is Frankie Shop LLC, United States of America (“U.S.”), represented by Coblenche & Associés, France.

Respondent is Jenna Staggs, U.S.

2. The Domain Name and Registrar

The disputed domain name <thefrankieshops.shop> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 2023, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on July 27, 2023 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 date.

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 July 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 21, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on August 28, 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

Complainant sells clothing and other items under the brand name THE FRANKIE SHOP and also under third party brands through other websites belonging to Complainant.

Complainant owns several registrations in various jurisdictions for THE FRANKIE SHOP trademark including, for example:

- International trademark registration No. 1648994, registered on October 12, 2021 designating a number of territories including China, the United Kingdom and the U.S.;
- U.S. trademark registration No. 5147070, registered on February 21, 2017 in International Class 35 with a first use in commerce date of November 11, 2014; and
- French trademark registration No. 4762800, registered on May 4, 2021 in classes 03, 04, 09, 14, 18, 25 and 35.

The disputed domain name was registered July 12, 2023 and resolves to a webpage purporting to be Complainant's authentic website. Respondent's website reproduces fashion images, models, and product names from Complainant's websites without Complainant's authorization, in some instances to sell products in competition with Complainant's products.

5. Parties' Contentions

A. Complainant

Complainant avers that it is a "very well-known company" specializing in the sale of clothing, accessories (including leather goods and jewelry), women's shoes, and cosmetics under the brand name "THE FRANKIE SHOP" and under third-party brands through the websites <thefrankieshop.com> and <thefrankieshop.com>. Complainant also avers that it has dozens of domain names that include or relate to its THE FRANKIE SHOP trademark, having registered the <thefrankieshop.com> domain name in 2014.

Complainant avers that Respondent registered and uses the disputed domain name to offer counterfeit and deeply discounted goods reproducing the names of Complainant's products and photos of its models and clothing products without authorization.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy. Complainant seeks transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To prevail under the Policy, Complainant must establish that (1) the disputed domain name is identical or confusingly similar to Complainant's THE FRANKIE SHOP trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith. Policy, paragraph 4(a).

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, however, the Panel may also accept as true

reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant that the disputed domain name is confusingly similar to Complainant's trademark for purposes of the Policy.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's trademark. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".shop" TLD, the Panel notes that the disputed domain name <thefrankieshops.shop> replicates Complainant's mark in total, having added only an additional letter "s" to the THE FRANKIE SHOP mark. In all other respects, the disputed domain name is identical to Complainant's mark. The Panel finds that such misspelling or typosquatting by Respondent does not prevent a finding of confusing similarity. See, e.g., WIPO Overview, section 1.9.

The Panel therefore rules that the disputed domain name is confusingly similar to Complainant's trademark and that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent provides no evidence to rebut that *prima facie* case. See *id.*

Complainant has provided credible evidence demonstrating that the website to which the disputed domain name routes offers clothing through the display of images that include Complainant's models and products, in some cases also reproducing the names of Complainant's products. The Panel accepts the Complaint's undisputed allegations that Respondent has no relevant trademark rights and has no authorization, license or affiliation which would permit it to use Complainant's trademarks in the disputed domain name or to display Complainant's fashion and product photographs.

Although Complainant does not address the question, it also appears that Respondent is not commonly known by the disputed domain name, and the Panel so finds.

In the absence of a reply from Respondent, the Panel accepts Complainant's undisputed allegations that the products offered on the website are counterfeit or are not genuine products of Complainant.¹ Since Respondent's website does not route Internet users to authorized products associated with the THE FRANKIE SHOP marks, the Panel concludes that there is no *bona fide* use.²

¹ In the absence of any explanation or reply by Respondent, the use without authorization of Complainant's promotional images and the deeply discounted prices on the website to which the disputed domain name resolves are among the factors that, in the Panel's view, support Complainant's counterfeit allegation.

² Even if the products offered via the website to which the disputed domain name routes were *genuine* products of Complainant, the website at the disputed domain name would not qualify for fair use since the website misleads Internet users by failing to disclose its

Respondent has refrained from opposing the evidence of impersonation and illegal copying provided by Complainant, and the Panel finds that the disputed domain name has been used for such illegal activities. UDRP Panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests in a respondent. *E.g.*, [WIPO Overview 3.0](#), sections 2.13.1 and 2.13.2.

In light of the evidence and allegations submitted by Complainant, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that Complainant establishes a *prima facie* case. Respondent has not opposed or rebutted that *prima facie* case. The Panel also holds that Respondent lacks rights or legitimate interests in the disputed domain name on the grounds that the nature of the disputed domain name (adding a letter “s” at the end of Complainant’s trademark), and its use to impersonate Complainant’s website, evidence Respondent’s intent to confuse Internet users searching for Complainant’s retail websites.

Therefore, the second element of Policy paragraph 4(a) is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith. Policy, paragraph 4(b)(iv). See, *e.g.*, *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#).

The record shows that Respondent registered the disputed domain name several years after Complainant registered its trademark rights and almost nine years after the first legitimate use in commerce of THE FRANKIE SHOP trademark. The composition of the disputed domain name and its use to direct Internet users to a website designed to falsely represent Complainant’s online operations and confuse Internet users, make obvious that Respondent knew the nature of Complainant’s business associated with its trademarks and targeted Complainant.

The Panel finds that Respondent deliberately attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with Complainant’s marks. This is evidence of bad faith registration and bad faith use. Policy paragraph 4(b)(iv).

The Panel also infers from the content of Respondent’s website that Respondent registered the disputed domain name to sell products in competition with Complainant and to disrupt Complainant’s business. This also supports a finding of bad faith under Policy paragraph 4(b)(iii).

Respondent’s failure to submit a response to the Complaint and the failure to provide accurate contact details as required by the Registrar are further evidence of use in bad faith.³ [WIPO Overview 3.0](#), section 3.3; *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel holds therefore that Respondent registered and is using the disputed domain name in bad faith, thus, establishing the third element under paragraph 4(a) of the Policy.

lack of a relationship with Complainant, the trademark owner. *E.g.*, *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), sections 2.5 & 2.8.

³ Written notification of the Complaint to Respondent by courier was not possible using the registrant address details provided by Respondent to the Registrar.

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 <thefrankieshops.shop> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: September 11, 2023