

ADMINISTRATIVE PANEL DECISION

Frankie Shop LLC v. Farrugia Global Enterprises Pty Ltd
Case No. DAU2023-0034

1. The Parties

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

The Respondent is Farrugia Global Enterprises Pty Ltd, Australia.

2. The Domain Names and Registrar

The disputed domain names <frankieshop.au>, <frankieshop.com.au>, <frankieshop.net.au>, <frankiesshop.au>, <frankiesshop.com.au>, and <frankiesshop.net.au> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On July 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 1, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceeding commenced on August 9, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 4, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on September 8, 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

A. Complainant

The Complainant is an online fashion clothing retailer headquartered in the United States and offering its products under the trade mark THE FRANKIE SHOP (the “Trade Mark”).

In addition to registrations in the United States and France, the Complainant is the owner of International registration No. 1648994 for the Trade Mark (designation including Australia), with a registration date of October 12, 2021.

B. Respondent

The Respondent is a company incorporated in Australia.

C. The Disputed Domain Names

Each of the disputed domain names was registered on the same date, June 22, 2023.

D. Use of the Disputed Domain Name

Each of the disputed domain names resolves to the same English language parking page hosted by the Registrar, with sponsored links and a “Get This Domain” link (the “Website”).

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names have been registered or subsequently used in bad faith.

B. Respondent

The Respondent did not respond to the Complainant’s contentions.

6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark.

Disregarding the relevant country code Top-Level Domain, each of the disputed domain names consists of the dominant feature of the Trade Mark, namely the words “frankie shop” (or “frankies shop”, with “frankie” in the plural).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

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

The Complainant contends that the Trade Mark "is known all over the world and enjoys certain reputation throughout the world", and relies upon English and French language articles featuring the Complainant from magazines such as Vogue (United Kingdom edition) and Forbes - describing the Complainant's beginnings as a boutique in New York City's Lower East Side in 2014, with a second bricks and mortar store in Paris, France, and operating online since 2016.

There has however been no evidence adduced with the Complaint of sales under the Trade Mark to customers in Australia, or of advertising or marketing initiatives under the Trade Mark targeting consumers in Australia, or of any specific reputation in the Trade Mark in the Australian market.

Although the Respondent has taken no part in this proceeding:

- (i) according to the Australian Government's online Australian Business Register ABN Lookup website, the Respondent is an Australian Private Company, registered since December 2018, with its business location in New South Wales;
- (ii) according to the ABN Lookup website, the Respondent has been operating under the registered business name FRANKIES AUTO ELECTRICS since December 2018; and
- (iii) the Respondent's website at "www.frankiesautoelectronics.com.au" promotes the Respondent's business both online and at two store locations in New South Wales.¹

The Registrant Contact for each of the disputed domain names is "Frank Farrugia", whose surname matches the name of the Respondent (and Registrant) and whose first name matches that found in the construction of the disputed domain names (*i.e.*, "frankie").

Each of the disputed domain names consists of the words "frankies shop" or a version of the same ("frankies hop" or, alternatively, "frankie shop").

The Panel notes also that each of the disputed domain names was registered quite recently, on June 22, 2023, and resolves to the same Website, containing sponsored links to websites referring not to the Complainant or to fashion or clothing retail websites, but to websites under the dictionary meaning of "shop".

In light of the above and in all the circumstances, the Panel finds that the Respondent has rights or legitimate interests in the disputed domain names by virtue of its operation of its FRANKIES AUTO ELECTRICS

¹ Such information is readily available as a matter of public record (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8 – panels may undertake limited factual research into matters of public record).

business in Australia since December 2018.

C. Registered or Used in Bad Faith

Although, in light of the Panel's finding under the second element, above, it is not strictly necessary to make a finding in respect of the third element in paragraph 4(a) of the Policy, in light of the matters highlighted in Section 6.B. above, the Panel is unable to conclude that, in registering or using the disputed domain names, the Respondent has targeted the Complainant or the Trade Mark.

Accordingly, the Panel finds that the disputed domain names have not been registered or used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 22, 2023