

## **ADMINISTRATIVE PANEL DECISION**

Fruit Of The Loom, Inc. v. Eric Gautier, Wordans  
Case No. D2022-2848

### **1. The Parties**

The Complainant is Fruit Of The Loom, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Eric Gautier, Wordans, France.<sup>1</sup>

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

The disputed domain name <fruitofthelom.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2022. On August 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2022, 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 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 August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2022.

On September 8 and 12, 2022, the Center received two email communications from a party which appears to be related to the Respondent indicating that they “received a letter from [the Center] about a domain dispute”, and they had not received a copy of the Complaint but “only the announcement informing [them] of the means to reply to the [C]omplaint”, and they were “aware that the deadline for replying was September

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<sup>1</sup> The disputed domain name was originally registered through a privacy service.

1st but it went to the Spam folder”. On September 20, 2022, the Center forwarded a copy of the Complaint to this party. Neither the Respondent, nor the person who contacted the Center on behalf of the Respondent filed a Response although both have been on notice since at least September 20, if not longer.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on October 3, 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

The Complainant is a United States company operating in the field of underwear and casualwear under the trademark FRUIT OF THE LOOM. The Complainant’s activity dates back to 1851 and has continued ever since for more than 160 years. The Complainant operates in 44 countries and employs more than 32,400 people worldwide. The Complainant has won several awards and is massively present on the principal social networks with several thousand followers on Facebook, Twitter and Instagram.

The Complainant is the owner of various trademark registrations for FRUIT OF THE LOOM, including the following:

| Trademark         | Territory                  | Reg. date        | Reg. No.  | Class(es)          |
|-------------------|----------------------------|------------------|-----------|--------------------|
| FRUIT OF THE LOOM | France                     | April 27, 1983   | 1232596   | 23, 24, 25, 26, 27 |
| FRUIT OF THE LOOM | European Union             | April 17, 2000   | 000731737 | 18, 24, 25         |
| FRUIT OF THE LOOM | United States              | October 30, 1923 | 0174998   | 10, 25, 26         |
| FRUIT OF THE LOOM | International Registration | January 29, 2019 | 1453624   | 18                 |

The Complainant also owns more than 600 domain names, 82 of which include the trademark FRUIT OF THE LOOM, e.g., <fruitoftheloom.com> registered on September 12, 1999 and <fruitoftheloom.eu>, registered on May 14, 2006.

The disputed domain name was registered on July 22, 2018 and was formerly used to redirect to another website at “www.wordans.com” where the Complainant’s goods were purportedly offered for sale and third parties’ goods were possibly offered for sale as well. At the time of the filing of the UDRP Complaint, the disputed domain name did not lead to an active webpage.

#### 5. Parties’ Contentions

##### A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to its FRUIT AND THE LOOM trademark. The disputed domain name is a typosquatting of the Complainant’s trademark, from which it differs only by the omission of the second letter “o” in the word “loom”. Furthermore, the Respondent’s use of the disputed domain name contributes to the confusion. Although the content of the website associated with the disputed domain name is usually disregarded under the first element of the Policy, UDRP panels have taken note of the content of the website associated with a domain name to confirm confusing similarity when it appears *prima facie* that the respondent seeks to target a trademark through the disputed domain name.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name since (i) the Complainant has never authorized the Respondent to register its trademark or a confusingly similar trademark as part of a domain name; (ii) the Respondent is not a licensee of the Complainant, nor has any relationship with it; (iii) the Respondent does not appear to have been commonly known by the disputed domain name; (iv) the Respondent has used a privacy Whois service to conceal its

identity at the time of the registration of the disputed domain name; (v) the use by the Respondent of the disputed domain name does not amount to a *bona fide* offering of goods and does not provide the Respondent with rights or legitimate interests in the disputed domain name because the Respondent has failed to disclose that it has no relationship with the Complainant, and is using the disputed domain name to also promote the sale of third parties' goods.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The FRUIT OF THE LOOM trademark is internationally known. The fact that the disputed domain name is a typosquatted version of the Complainant's trademark and previously redirected to the Respondent's own website, offering for sale FRUIT OF THE LOOM branded goods, makes it illogical to believe that the Respondent registered the disputed domain name without being aware of the Complainant and its trademark.

The Respondent's previous use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under the Policy. The fact that the disputed domain name currently resolves to an inactive website does not prevent a finding of bad faith especially since the Respondent lacks rights or legitimate interests in the disputed domain name and it is not possible to conceive any plausible legitimate actual or contemplated good-faith use of it by the Respondent.

Lastly, the Complainant points out that the Respondent used a privacy service to hide its identity at the time of the registration of the disputed domain name. The use of a privacy service is further evidence of bad faith registration and use, as it blocks or intentionally delays disclosure of the identity of the actual underlying domain name registrant.

## **B. Respondent**

Apart from the email communications from a party that appears to be related to the Respondent as mentioned under section 3. above, the Respondent did not formally reply to the Complainant's contentions.

## **6. Discussion and Findings**

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

The Panel finds that the Complainant has duly proved that it is the owner of the FRUIT OF THE LOOM trademark and that its rights long predate the date of registration of the disputed domain name. The disputed domain name is confusingly similar to the Complainant's trademark as it reproduces it entirely but for the fact that the second letter "o" in the word "loom" is missing. This slight difference between the Complainant's trademark and the disputed domain name is likely to remain unnoticed to the Internet users and certainly does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name as the Complainant's trademark is fully recognizable within the disputed domain name. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Therefore, the Panel is satisfied that the first condition under the Policy is met.

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

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

According to paragraph 4(c) of the Policy, 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 the Respondent's rights or legitimate interests to the disputed domain name for purposes of paragraph 4(a)(ii) of the Policy:

(i) before any notice of the dispute, the Respondent has used, or has made 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 not acquired trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the case at issue, the Complainant has affirmed that it does not have any relationship with the Respondent and that the Respondent is not authorized to register and use a domain name that is confusingly similar to the Complainant's trademark. Furthermore, the Respondent does not appear to be commonly known by the name "fruitofthelom".

The disputed domain name previously redirected to a website purportedly offering for sale FRUIT OF THE LOOM branded products as well as possible products of third parties. Previous UDRP panels have established that under certain conditions a reseller of the complainant's goods may own rights or legitimate interests in the disputed domain name. According to the *Oki Data* case (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), the following circumstances, when present, may provide the Respondent with rights or legitimate interests in the disputed domain name:

(i) the respondent is actually offering the goods or services at issue;

(ii) the respondent is using the site to sell only the trademarked goods or services;

(iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and

(iv) the respondent is not trying to "corner the market" in domain names that reflect the trademark.

From the evidence in the case file, the Panel notes that the Respondent's website to which the disputed domain name redirected, did not include any indication as to its connection (or lack of connection) with the Complainant. According to the Complainant, the said website also offered for sale goods bearing unrelated third parties' brands. The Panel has reviewed the evidence filed by the Complainant in this regard, but could not find any indication of other branded goods. However, the screenshot provided by the Complainant in support of its statement shows that the Complainant has selected FRUIT OF THE LOOM in the "refine your selection" area of the website. Therefore, it is plausible that other branded goods are offered for sale on the same website and that these goods would have appeared had the Complainant not refined its search. Therefore, in the absence of any contrary argument from the Respondent, the Panel finds that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods and services, and has not made a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the FRUIT OF THE LOOM trademark.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden of production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent has chosen not to formally file a Response and therefore has waived its right to contest the Complainant's allegations.

The Panel is therefore satisfied that the second condition under the Policy is met.

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

The Panel agrees with the Complainant that the disputed domain name was registered and has been used in bad faith.

As far as registration in bad faith is concerned, the Panel finds that the Complainant's trademark is inherently distinctive and enjoys wide reputation. The FRUIT OF THE LOOM mark is uniquely associated with the Complainant. In addition, the disputed domain name is a typosquatting of the Complainant's trademark. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a famous or widely known trademark - such as a domain name comprising a typo - by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Furthermore, in the past, the Respondent used the disputed domain name to redirect to a website purportedly offering for sale the Complainant's goods. It is therefore clear that the Respondent was well aware of the Complainant's activity and of its FRUIT OF THE LOOM trademark at the time it registered the disputed domain name.

In light of the foregoing, the Panel concludes that the disputed domain name was registered in bad faith.

The Respondent was using the disputed domain name to redirect to a website purportedly offering for sale FRUIT OF THE LOOM and possible third parties' branded goods. The aim of the Respondent was to mislead potential consumers looking for the Complainant into believing that the website to which the disputed domain name redirected, was an official website of the Complainant, or was endorsed by the Complainant. The fact that the Respondent's website also possibly sold third parties' products, presumably in competition with those of the Complainant, is a relevant circumstance to take into account when assessing bad faith. In the absence of rights or legitimate interests, there seems to be no other reason for the Respondent to make use of the disputed domain name other than to take advantage of the reputation of the Complainant and of its trademark for its own profit.

Even if at the time of filing the Complaint the use described above had ceased, the passive holding of the disputed domain name does not prevent a finding of bad faith. Previous UDRP panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. According to section 3.3 of the [WIPO Overview 3.0](#), "factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

In the case at issue, the Complainant's mark is highly distinctive and enjoys wide reputation. Furthermore, the Respondent did not submit a response and did not provide evidence of actual or contemplated *bona fide* use. Rather, the Respondent previously used the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its own website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Although this use has ceased, one cannot exclude that it is resumed in the future, and, in any case, it is not possible to conceive any plausible legitimate actual or contemplated good-faith use of the disputed domain name that is a typosquatting of the Complainant's renowned FRUIT OF THE LOOM trademark by the Respondent.

Lastly, the Panel notes that at the time of the registration of the disputed domain name, the Respondent used a privacy service, which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant and is a further indication of bad faith under the circumstances of this case.

For all reasons mentioned above, the Panel finds that the disputed domain name has been registered and used in bad faith.

The Panel therefore concludes that the third and last condition under the Policy is also 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 <fruitofthelom.com> be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: October 17, 2022