

ADMINISTRATIVE PANEL DECISION

Fruit Of The Loom, Inc. v. Katja Eisenhower, Fuerst Ursula
Case No. D2024-4781

1. The Parties

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

The Respondents are Katja Eisenhower, and Fuerst Ursula, Germany.

2. The Domain Name and Registrar

The disputed domain names <fruitofloomcanada.com> and <fruitoftheloom-canada.com> are registered with NameSilo, LLC and Key-Systems GmbH, respectively (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 20, 2024. On November 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 20 and November 22, 2024, the Registrars respectively 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 2024, 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 amended Complaint on November 26, 2024.

The Center verified that the Complaint together with the amended 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 Respondents of the Complaint, and the proceedings commenced on November 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on December 20, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on January 6, 2025. 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 global underwear and casualwear United States of America business set up back in 1851 and, doing business in 44 countries with more than 32,400 staff members.

The Complainant is the owner of a portfolio of trademarks for FRUIT OF THE LOOM in different jurisdictions. By way of example:

United States of America with registration number 174998, registered on October 30, 1923.

European Union with registration number 000731737, registered on April 17, 2000.

The Complainant has received several recognitions for its environmental awareness such as the “Smart Energy Decisions Offsite Renewable Energy Award” in March 2018.

The Complainant owns more than 600 domain names among which their primary domain name <fruitoftheloom.com> was registered on September 12, 1999.

Based on previous decisions and evidence FRUIT OF THE LOOM is considered well-known for UDRP purposes. See, for example, *Fruit of the Loom, Inc. v. Desmond Ferros*, WIPO Case No. [D2004-1074](#).

The disputed domain name <fruitofloomcanada.com> was registered on August 5, 2024 and was used to host a website mimicking the Complainant’s official site and reproducing Complainant’s registered logo. Besides, <fruitoftheloom-canada.com> was registered on May 18, 2024 and, redirected back to <fruitofloomcanada.com>. Currently both disputed domain names are inactive.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that by adding a geographical term, e.g., “canada”, the disputed domain names do not avoid confusing similarity. Likewise, the omission of the article “the” or the use of an hyphen does not diminish confusing similarity.

Further, the Complainant alleges that there is no evidence or circumstances under Paragraph 4(c) of the Policy that would give rise to any rights or legitimate interest for the Respondent.

Lastly, the Complainant claims that the Respondent knew of and targeted the Complainant’s trademark when registering the disputed domain names and have been using them in bad faith.

B. Respondent

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the disputed domain name registrant as a condition of registration.

A. Consolidation: Multiple Respondents

The Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are under common control and thus requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

As noted, the disputed domain name registrants did not comment on the Complainant’s request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

As regards common control, the Panel notes that on balance the evidence supports a common control over the disputed domain names. As highlighted by the Complainant, <fruitofloomcanada.com> redirects to the other disputed domain name, both are hosted in the same provider, both Respondents are using generic “@hotmail” and “@163.com” domains for the email addresses and, the composition in both disputed domain names are largely the same with the same meaning.

Regarding fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

B. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition or omission of other terms, here, “Canada” and “the”, may bear on assessment of the second and third elements, the Panel finds the addition or omission of such term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity here, claimed as applicable to this case: impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Moreover, the nature of the disputed domain names and the prominent use of the Complainant’s logo on the website to which <fruitoftheloom-canada.com> resolves carry out a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark. See paragraph 4(b)(iv) of the Policy.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

From the record and its evidence, the Panel finds that the Respondent knew or should have known the Complainant and its trademarks at the moment of the registration of the disputed domain name. The distinctiveness of the mark and its post registration use support such a finding.

Panels have held that the use of a domain name for illegitimate activity here, claimed impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, noting the composition and prior use of the disputed domain names, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

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 <fruitofloomcanada.com> and <fruitoftheloom-canada.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: January 20, 2025