

## **ADMINISTRATIVE PANEL DECISION**

Chewy, Inc. v. Xiuyun Li  
Case No. D2022-3766

### **1. The Parties**

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is Xiuyun Li, China.

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

The disputed domain names <chewyshopus.com> and <friscostoreus.com> are registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 10, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on November 23, 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, which was founded in 2011, retails pet products online under the mark CHEWY. The Complainant had approximately USD 8.9 billion turnover in the 2021 fiscal year, and it currently employs some 21,000 people.

One of the Complainant's brands is called "Frisco by Chewy".

The Complainant owns many trade marks for CHEWY and FRISCO, including United States trade mark No. 5028009 for CHEWY, registered on August 23, 2016, in class 35, and United States trade mark No. 5382635 for FRISCO, registered on January 16, 2018, in classes 16, 20, and 31.

The Complainant operates its own website at "www.chewy.com".

The disputed domain names were registered on August 19, 2022.

Both disputed domain names have been used to resolve to websites branded with CHEWY and FRISCO logos respectively, similar to those of the Complainant, and which purport offer the Complainant's products for sale.

The Respondent owns the following additional domain names, which incorporate third party trade marks and resolve to websites that appear to impersonate the respective trade mark owners: <newdisneystore.com>, <thepurinasales.com>, and <bigagnessales.com>. There were all registered on the same date as the disputed domain names.

#### **5. Parties' Contentions**

##### **A. Complainant**

The following is a summary of the Complainant's contentions.

The disputed domain names are confusingly similar to the Complainant's trade mark.

The disputed domain names respectively incorporate the each of the Complainant's marks in their entirety with the addition of the dictionary words "shop" and "store", and the abbreviation for the United States, "us". None of the additional terms distinguish the relevant disputed domain name from the Complainant's relevant mark.

The Respondent lacks rights or legitimate interests in the disputed domain names.

The Complainant has not authorised the Respondent to use its marks.

There is no evidence that the Respondent has been commonly known by the disputed domain names or that the Respondent owns any relevant trade marks.

There is no conceivable legitimate use of the disputed domain names given their confusing similarity with the Complainant's marks.

The Respondent cannot claim to be a legitimate reseller of the Complainant's goods as it is offering counterfeit or "parallel import" / "grey market" goods and it fails to accurately and prominently disclose its lack of a relationship with the Complainant, including by use of the Complainant's logos and by imitating the look and feel of the Complainant's websites.

The Respondent is not using the disputed domain names for a *bona fide* offering of goods or services. On the contrary, the Respondent has used the disputed domain names to impersonate the Complainant. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain names.

The disputed domain names were registered and are being used in bad faith.

The Respondent has intentionally created a likelihood of confusion with the Complainant's mark.

The disputed domain names of themselves constitute initial interest confusion.

The Respondent's websites lack disclaimers and are otherwise liable to be confused with those of the Complainant.

Use of the disputed domain names to sell counterfeit or "parallel import" / "grey market" goods is further evidence of bad faith.

The Respondent has engaged in a pattern of abusive domain name registrations.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain name have been registered and are being used in bad faith.

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

The Complainant has established registered rights in the marks CHEWY and FRISCO.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, geographical or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, each of the disputed domain names includes one the Complainant's distinctive trade marks (CHEWY or FRISCO), which remains readily recognisable within each disputed domain name, plus various additional descriptive/geographical terms which do not prevent a finding of confusing similarity as explained above.

For the above reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's trade marks and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

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

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out 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 domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade marks.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent is purporting to resell the Complainant's own goods. The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “*Oki Data* requirements”).

In this case, the Panel considers that the Respondent has failed to comply with the *Oki Data* requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, as explained in section 6C below. Moreover, the Panel finds that the disputed domain names are inherently misleading (see section 2.5.1 of [WIPO Overview 3.0](#)).

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

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

The Panel considers that the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

The Respondent has used both of the disputed domain names for websites that impersonate the Complainant including by prominent use of the Complainant's mark/logo and by the lack of any prominent disclaimer.

The Panel further notes that the Respondent has not come forward to deny the Complainant's assertions of bad faith and that the Respondent has engaged in a pattern of registering other domain names reflecting third party marks and using them for websites that appear to impersonate the respective trade mark owners.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 names, <chewyshopus.com> and <friscostoreus.com>, be transferred to the Complainant.

/Adam Taylor/

**Adam Taylor**

Sole Panelist

Date: December 7, 2022