

ADMINISTRATIVE PANEL DECISION

Active Sports, Inc. v. 建华 晏
Case No. D2022-4270

1. The Parties

The Complainant is Active Sports, Inc., United States of America (“United States”) represented by Neal & McDevitt, United States

The Respondent is 建华 晏, China.

2. The Domain Name and Registrar

The disputed domain name <theframeds.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 16, 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 November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on December 13, 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 has, since at least 2014, sold bicycles and related products under its FRAMED and FRAMED BIKES trade marks online from its website at “www.framedbikes.com”.

The Complainant’s corporate affiliate, CWI, Inc, owns numerous trade mark registrations for FRAMED and FRAMED BIKES marks in the United States which the Complainant is exclusively licensed to use, including United States trade mark registration No. 5,673,580 FRAMED in classes 12, 21, and 25 with a registration date of February 12, 2019. Importantly for this matter, the Panel has independently established that CWI, Inc also owns the following relevant trade mark registration covering China, the Respondent’s territory: International Registration No. 1439614 FRAMED BIKES in classes 12, 21 and 25 with a registration date of November 9, 2018.

The Domain Name was registered on July 6, 2022 and currently resolves to a website prominently entitled “FRAMED BIKES” ostensibly offering the Complainant’s products for sale using a replica of the Complainant’s logo, the Complainant’s product names, and product imagery.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its FRAMED marks, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that the Domain Name is used to impersonate the Complainant for purposes of fraud.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Although the Complainant itself does not own any relevant trade marks, its corporate affiliate does, and the Complainant is exclusively licensed to use the FRAMED and FRAMED BIKES trade marks owned by its affiliate. It is well-established that a trade mark owner’s affiliate, such as a subsidiary of a parent or of a holding company, or an exclusive trade mark licensee, is considered to have rights in a trade mark under the UDRP for purposes of standing to file a complaint (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.4.1).

The registered FRAMED mark is wholly contained within the Domain Name with additions, being the FRAMED mark recognisable. Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#) at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant’s un rebutted evidence establishes that its FRAMED marks were registered and used long prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant’s FRAMED mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's website, including use of a replica of the Complainant's distinctive logo, the Complainant's product imagery and product names, is one of impersonation of the Complainant. UDRP Panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13). To the extent that the Domain Name's website might be considered that of a reseller of the Complainant's products, it does not meet the requirements of the well-known Oki Data test given that the site does not accurately and prominently disclose the Respondent's relationship (or lack thereof) with the Complainant (*Oki data Americans, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#) at section 2.8).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

The Domain Name's website clearly and intentionally impersonates the Complainant, and the Domain Name incorporates the Complainant's FRAMED mark. The Complainant's investigator attempted to make a test purchase of a product advertised on the website without success. The investigator's attempts appeared to trigger bank fraud warnings. This all strongly suggests that the Domain Name's website was set up to impersonate the Complainant for purposes of fraud, falling squarely within paragraph 4(b)(iv) of the Policy.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). The Respondent also apparently supplied incomplete address details in the Whois record for the Domain Name; the Center's courier indicated that a "bad address" was supplied and that the Center's Written Notice could not be delivered to the Respondent. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit (*Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#)).

The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name, <theframeds.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: December 22, 2022