

## **ADMINISTRATIVE PANEL DECISION**

Frame La Brands, LLC v. Ning8 Qin  
Case No. D2023-0421

### **1. The Parties**

The Complainant is Frame La Brands, LLC, United States of America (“United States” or “US”), represented by Pearne & Gordon, LLP, United States.

The Respondent is Ning8 Qin, China.

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

The disputed domain name, <frame-outlet.com>, 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 January 30, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 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 for the disputed domain name.

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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2023.

The Center appointed David Stone as the sole panelist in this matter on March 7, 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

The Complainant is a US-headquartered clothing retailer with showrooms in the US and the United Kingdom.

The Complainant owns numerous trade marks, including the following (the "Marks").

- **FRAME** : United States registration number 5166888, registered on March 21, 2017 in international class 35;
- **FRAME** : United States registration number 5270809, registered on August 22, 2017 in international class 25; and
- **FRAME** : United States registration number 5556035, registered on September 4, 2018 in international class 18.

In addition, the Complainant operates an online retail store at the domain name <frame-store.com>.

The disputed domain name was registered on August 6, 2022. The website to which the disputed domain name resolves is being used to advertise the Complainant's products at a discount, using the Marks and images taken from the Complainant's website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Marks. Disregarding the generic Top-Level Domain ("gTLD"), ".com", the disputed domain name differs from the Marks only in the addition of a hyphen and the generic term "outlet". The term "outlet" is a descriptive word regularly used in the retail industry, and its addition does not distinguish the disputed domain name from the Marks. Neither does the addition of a hyphen or the presence of the gTLD.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The website to which the disputed domain name resolves is being used to advertise the Complainant's products at a discount, using the Marks and images taken from the Complainant's website. The Marks appear as branding both on the website itself and in the product images. However, the Respondent is not sponsored by or affiliated with the Complainant in any way, and, in particular, is not an authorized dealer or distributor of the Complainant's products. The Respondent's use of the Marks shows that it had knowledge of the Marks when it registered the disputed domain name, and the inclusion of the word "outlet" in the disputed domain name implies that the Respondent's website is a sales outlet for the Complainant's products. This deceives consumers into believing that the Respondent is affiliated with the Complainant in some way.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. Given the use being made of the Marks by the Respondent, as just described, it seems impossible that the Respondent would have chosen to register and use the disputed domain name without meaning to refer to, and pass itself off as, the Complainant. Notably, the Respondent's website does not enable users to purchase the advertised products. Users can place products in a cart and enter personal and payment information such as credit card details, but it is not possible to finalise purchases. The Respondent therefore seems to be using the disputed domain name to confuse Internet users as to the source of the Respondent's website, and to collect Internet users' confidential information for commercial gain.

##### B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainant must prove in order to succeed:

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

### A. Identical or Confusingly Similar

On the evidence provided by the Complainant, the Panel is satisfied that the Complainant has rights in the Marks. In assessing the similarity between the disputed domain name and the Marks it is permissible to ignore the gTLD. The disputed domain name then comprises the entire text of the Marks in addition to a hyphen and the term “outlet”. Where a trade mark is recognizable within a disputed domain name, the additional presence of a descriptive term does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8). As contended by the Complainant, “outlet” is a descriptive term commonly used in retail, and neither its presence (nor the presence of the hyphen) prevents a finding of confusing similarity between the disputed domain name and the Marks (*Atelier De Production Et De Création (A.P.C.) v. Linyi Wong*, WIPO Case No. [D2019-1931](#)).

The Panel therefore finds that the disputed domain name is confusingly similar to the Marks, and concludes that the condition in paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the criteria that determine whether a domain name registrant has rights or legitimate interests in a 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 organisation) 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 noncommercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant makes out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent has provided no evidence to contradict it.

On the facts and contentions before the Panel, the Respondent is not commonly known by the disputed domain name and is not authorised to use the Marks. Comparison of screenshots of the Respondent's website and the Complainant's website satisfies the Panel that the Respondent uses its website to advertise the Complainant's products, or goods purported to be the Complainant's products. It does so by using images taken from the Complainant's website and under the guise of the Complainant, for example by using a device identical to the Marks in the header of the website. The Respondent has provided no evidence of having any licence to advertise products branded using any of the Marks, nor of having permission to identify itself using the Marks. In particular, the Respondent has not contended that it is making *bona fide* use of its

website to resell the Complainant's genuine branded goods. The Complainant contends that the Respondent is not even attempting to sell the advertised products, but is using the website to collect user information such as credit card details. See [WIPO Overview 3.0](#), section 2.13.

The Panel finds that, at a minimum, the Respondent is exploiting the confusing similarity between the disputed domain name and the Marks to divert Internet users searching for the Complainant's products and to deceive those users as to the origin of the advertised products. Such capitalization on the Complainant's goodwill cannot constitute *bona fide* or legitimate fair use of the disputed domain name (*Atelier De Production Et De Création (A.P.C.) v. Linyi Wong, supra*). The condition in paragraph 4(a)(ii) of the Policy is therefore satisfied.

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

Paragraph 4(b) of the Policy sets out the non-exhaustive criteria for bad faith. Generally, for the purposes of the Policy, bad faith constitutes registration and use of a domain name in order to:

- (i) sell, rent or transfer the domain name to the trade mark owner (or a competitor thereof) for a profit;
- (ii) prevent the trade mark owner from registering its trade mark in a domain name, provided that the respondent is engaged in a pattern of such conduct;
- (iii) disrupt the business of a competitor; or
- (iv) divert Internet traffic for commercial gain.

As discussed above, the Complainant has provided unchallenged evidence that the Respondent uses the disputed domain name without authorisation to advertise the Complainant's products. The Respondent's website displays branding identical to the Marks and features images from the Complainant's own website. This is clear evidence that the Respondent was aware of the Complainant and its business before this dispute arose. The Respondent has provided no explanation of its behaviour, and so the Panel concludes that the Respondent devised and registered the disputed domain name so as to create a false and misleading impression of association between the disputed domain name and the Complainant. The use of the term "outlet" in the disputed domain name and the discounted prices at which the advertised products are offered indicate that the Respondent intends users to believe that its website is an authorized retail outlet at which they can purchase the Complainant's products at reduced prices.

The Respondent's objective may have been to divert Internet traffic for the Respondent's commercial gain, either through the sale of counterfeit products or, as the Complainant implies, fraudulent misuse of confidential information such as the users' credit card information. Alternatively, it may have been to impersonate the Complainant, disrupt its business and damage its reputation by attracting users to an apparently authorized website from which they cannot purchase anything. See [WIPO Overview 3.0](#), section 3.1.4. In either case, the Panel concludes that the condition in paragraph 4(a)(iii) of the Policy is satisfied.

### **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, <frame-outlet.com>, be transferred to the Complainant.

*/David Stone/*

**David Stone**

Sole Panelist

Date: March 21, 2023