

ADMINISTRATIVE PANEL DECISION

Franke Technology and Trademark Ltd v. yexi jin
Case No. D2023-2791

1. The Parties

The Complainant is Franke Technology and Trademark Ltd, Switzerland, represented by BrandIT GmbH, Switzerland.

The Respondent is yexi jin, China.

2. The Domain Name and Registrar

The disputed domain name <frankejapan.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 2023, the Registrar 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 2023 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 July 7, 2023.

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 Respondent of the Complaint, and the proceedings commenced on July 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2023.

The Center appointed John Swinson as the sole panelist in this matter on August 10, 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 part of the Franke Group, a global group of companies based in Switzerland, founded in 1911. The Franke Group has designs and sells devices and systems for kitchens, bathrooms, professional food services and coffee preparation. For example, the Franke Group sells sinks, taps, ovens, cooktops, and the like for home use.

The Franke Group has an active business presence in China. Several companies of the Franke Group are established and operate in China, such as the companies Franke (China) Kitchen System Co., Ltd. and Franke (Shanghai) Trade Co. Ltd. which are based in the city of Shanghai, China.

The Complainant owns of trademark registrations for the mark FRANKE as a word mark and figurative mark in numerous jurisdictions, including registrations from 1972. An example trademark registration is China Trademark No. 3815239 for FRANKE registered on December 28, 2005.

The Complainant and its related companies also own numerous domain names containing the FRANKE trademark, among them: <franke.com>, <franke.hk> and <franke.cn>. The Complainant uses these domain names to resolve to the Franke Group's official websites through which it informs Internet users and potential consumers about its products and services.

The disputed domain name was registered on August 29, 2022.

The Respondent did not file a Response, so little information is known of the Respondent. According to the Registrar's records, the Respondent has an address in China.

On March 20, 2023, the disputed domain name resolved a website displayed content of pornographic nature and text in Chinese together with gambling advertisements. At present time, the disputed domain name does not resolve to an active website.

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 the use of the disputed domain name to operate a child pornography website is the type of *per se* illegal activity that is manifestly considered evidence of bad faith under the Policy.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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 has been registered and is being used in bad faith.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

Based on the available record, the Panel finds the first element of the Policy has been established.

B. 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.

While 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 often-impossible 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. 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 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 illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, 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.

At one time, the disputed domain name resolved to a website that contained pornography which involves child pornography, together with gambling advertisements. This activity cannot be considered *bona fide*

offerings of goods or services nor a legitimate noncommercial or fair use under the Policy. The use of a domain name for *per se* illegal activity can never confer rights or legitimate interests on a respondent. See *Europe 1 Telecompagnie v. WhoisGuard, Inc. / Dost Mohammad*, WIPO Case No. [D2020-2468](#).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. 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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant provided evidence of its long-standing trademark registration in China (where the Respondent is located). The Complainant also provided details of its global reputation. The disputed domain name includes the Complainant's widely-known FRANKE trademark in its entirety. It is highly likely that the Respondent knew of the Complainant or the Complainant's trademark when registering the disputed domain name. Additionally, the structure of the disputed domain name (being the Complainant's trademark and a country where the Complainant does business) is also probative evidence that shows that the Respondent registered the disputed domain name having the Complainant or its FRANKE trademark in mind.

At one time, the disputed domain name resolved to a pornography website together with gambling advertisements, which likely disrupted the Complainant's business and potentially tarnished its trademark. In the context of this case, this is indicia of bad faith use. See, for example, *ManpowerGroup Inc. v. hongli wang*, WIPO Case No. [D2021-3891](#). The website at the disputed domain name also includes child pornography, which is clearly use of the disputed domain name in bad faith. See *Prada S.A. v. Michael Faronston*, WIPO Case No. [D2006-0585](#).

The Panel also finds, based on the evidence before the Panel, that the Respondent has intentionally attempted to attract for commercial gain Internet users to his or her website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith in this case.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <frankejapan.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: August 24, 2023