

## **ADMINISTRATIVE PANEL DECISION**

Les Parfumeries Fragonard v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2022-4607

### **1. The Parties**

The Complainant is Les Parfumeries Fragonard, France, represented by Inlex IP Expertise, France.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <usafragonard.com> is registered with Media Elite Holdings Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 December 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2023.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on January 13, 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 French company manufacturing and selling perfumery and cosmetic products. According to the Complainant, they are one of the three oldest perfume factories in the city of Grasse, the world capital of perfume since the late 17th century and is selling products branded FRAGONARD in numerous stores and corners in the world.

The Complainant is the owner of the following trademark registrations:

- French registration No. 1327342 for FRAGONARD registered on October 18, 1985;
- United States of America registration No. 2026820 FRAGONARD registered on December 31, 1996; and
- European Union registration No. 012235941 for FRAGONARD registered on March 12, 2014.

The Complainant owns the <fragonard.com> domain name, which resolves to its official website.

The disputed domain name was registered on April 14, 2022, and at the time of the decision it resolves to a pay-per-click ("PPC") website redirecting to a third-party website selling perfumery and cosmetic products. At the time of filing the Complaint, the disputed domain name resolved to a website blocked by antivirus software because of a fraudulent site.

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

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

The Complainant asserts that the disputed domain name is confusingly similar, and at the same time, incorporating the Complainant's well-known trademark FRAGONARD and that the addition of the descriptive word "usa" which is a geographical term does not prevent the association between the disputed domain name and the Complainant's trademark.

The Complainant considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name, mainly because the Complainant has neither licensed nor otherwise authorized the Respondent to use its marks or to apply for or use any domain name incorporating the trademark FRAGONARD. The Complainant further asserts that the disputed domain name leads to a website blocked by antivirus software because of a fraudulent site. Therefore, the use of the disputed domain name for illegal activity cannot be considered a *bona fide* offering of goods and services.

Finally, in addressing the question of registration and use of the disputed domain name in bad faith, the Complainant observes that the Respondent is well aware of the Complainant's trademark. Considering their trademark is well-known, it is inconceivable that the Respondent ignored the Complainant or its earlier rights. A quick trademark search would have revealed to the Respondent the existence of the Complainant and its trademarks.

##### **B. Respondent**

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

## 6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove the followings:

- (i) that the disputed domain name is identical or confusingly similar to a trademark 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. A trademark registration provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

As indicated above, the Complainant holds several trademark registrations for the trademark FRAGONARD. The disputed domain name integrates the Complainant's FRAGONARD trademark in its entirety.

The disputed domain name differs from the registered FRAGONARD trademark by the addition of the word "usa" which is a geographical term. This addition does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8.

As regards the generic Top-Level Domain ".com", it is typically disregarded under the confusing similarity test under the Policy.

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

The onus is on the Complainant to make out at least a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts the Complainant's submissions that the Respondent does not appear to be known by the disputed domain name, has not used, or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, is not making a legitimate noncommercial or fair use of the disputed domain name, and has no consent from the Complainant to use its trademark.

The Respondent has not filed a Response.

Furthermore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Complainant has made out its *prima facie* case under this element of the Policy and the Respondent has failed to rebut it. Accordingly, the Complainant succeed in relation to the second element of the Policy.

### C. Registered and Used in Bad Faith

The Panel accepts the Complainant's assertions that the trademark FRAGONARD is a well-known trademark. The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#); *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#); *Microsoft Corporation v. Montrose Corporation*, WIPO Case No. [D2000-1568](#)).

The disputed domain name resolved to a website blocked by antivirus software because of a fraudulent site. The use of a domain name for illegal activity can never confer rights or legitimate interests on the Respondent.

The fact that the disputed domain name is currently redirecting to a third-party website selling perfumery and cosmetic products through a PPC page comprising the links relating to perfumes corroborates the Panel's finding that the disputed domain name was obviously registered by the Respondent with the Complainant in mind.

Noting the absence of any submission from the Respondent to the contrary and the fact that the website resolves to a third-party competitor website, it is unequivocally clear that this registration was made without the consent of the Complainant and in order to take advantage of the Complainant's mark.

According to [WIPO Overview 3.0](#), section 3.5, the fact that PPC links are generated by a third party, or the fact that the Respondent itself may not have directly profited, would by itself not prevent a finding of bad faith. Several UDRP panels have held that a respondent cannot disclaim responsibility for content with respect to "automatically" generated PPC links. Therefore, bad faith exists even if the Respondent could argue that it was unaware of the monetized parking page associated with the disputed domain name.

It is not plausible that the disputed domain name was legitimately registered without the intention, in some way or another, to take unfair advantage of the similarity between the disputed domain name and the Complainant's trademark.

Therefore, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

### 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 <usafragonard.com> be transferred to the Complainant.

*/Emre Kerim Yardimci/*

**Emre Kerim Yardimci**

Sole Panelist

Date: January 30, 2023