

## **ADMINISTRATIVE PANEL DECISION**

Chewy, Inc. v. Zgvfdd Unjfd

Case No. D2022-4745

### **1. The Parties**

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Zgvfdd Unjfd, China.

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

The disputed domain name <friscopet.store> (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 December 9, 2022. On December 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022, 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 December 23, 2022.

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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 17, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on July 12, 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, founded in 2011, retails pet products and services online under the mark CHEWY, having net sales of over USD 8 billion and more than 20 million active customers in its 2021 fiscal year. In 2016, the Complainant launched its FRISCO brand, which it uses for pet products.

The Complainant's CHEWY and FRISCO marks are registered in numerous jurisdictions, including United States Registration No. 5,382,635 FRISCO in classes 16, 20 and 31, with a registration date of January 16, 2018.

The Domain Name was registered on June 24, 2022 and currently resolves to a website ostensibly offering pet products for sale, headed "Fresco", featuring product photographs and descriptions from the Complainant's website ("www.chewy.com"), and featuring the Complainant's CHEWY and FRISCO marks.

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

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

The Complainant contends that the Domain Name is confusingly similar to its well-known FRISCO mark, 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 it has been used to impersonate the Complainant.

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

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

#### **6. Discussion and Findings**

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

The Domain Name incorporates the entirety of the Complainant's registered and well-known FRISCO mark. Where a domain name incorporates the entirety of a trade mark, the domain name will normally be considered confusingly similar to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

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

The Complainant's mark was registered and well-known for many years prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's website 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 2.13.1). 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 with the Complainant (*Oki Data Americas, 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**

Considering the facts canvassed above, the Domain Name has clearly been used to impersonate the Complainant. Given this and the composition of the Domain Name featuring the entirety of the Complainant's well-known mark plus a term – “pet” – that is descriptive of the Complainant's business, the Respondent must have had the Complainant in mind for the purpose of impersonation when registering and using the Domain Name, falling squarely within paragraph 4(b)(iv) of the Policy (*Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)).

The Panel has independently established that at least one security vendor has flagged the Domain Name for malicious activity, which is an indicator of bad faith (*The Commissioners for HM Revenue and Customs v. WhoisGuard Protected, WhoisGuard, Inc. / Hoshyar Marshall*, WIPO Case No. [D2021-0344](#)).

It is self-evident, from the Whois record, that the Respondent provided at least a false name, consisting of an assortment of random letters, indicating bad faith ([WIPO Overview 3.0](#) at section 3.6). 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 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, <friscopet.store>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: July 21, 2023