

ADMINISTRATIVE PANEL DECISION

Franke Technology and Trademark Ltd v. 朱新款 (Zhu XinKuan)
Case No. D2023-0526

1. The Parties

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

The Respondent is 朱新款 (Zhu XinKuan), China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (“Redacted for Privacy”) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On February 8, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on February 10, 2023. The Respondent did not comment on the language of the proceeding. The Complainant filed an amended Complaint in English on February 13, 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 in English and Chinese of the Complaint, and the proceedings commenced on February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 15, 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, established in 2002, is part of the Franke Group, which provides devices and systems for kitchens, bathrooms, professional food services and coffee preparation. The Franke Group operates in many countries, including China, where it has established Franke (China) Kitchen System Co., Ltd and Franke (Shanghai) Trade Co., Ltd, both based in Shanghai. The Complainant owns multiple trademark registrations in multiple jurisdictions, including the following:

- International trademark registration number 387826 for a semi-figurative FRANKE mark (the “Franke logo”), registered on February 17, 1972, designating multiple jurisdictions, and specifying goods in classes 6, 7, 8, 9, 10, 11, 12, 19, 20 and 21;
- International trademark registration number 581340 for the Franke logo, registered on October 24, 1991, designating multiple jurisdictions, including China, and specifying goods in classes 6, 9, 11, 19, 20 and 21; and
- International trademark registration number 975860 for FRANKE, registered on June 14, 2007, designating multiple jurisdictions, including China, and specifying goods and services in classes 6, 11, 20, 21 and 37.

The above trademark registrations remain current. The Complainant has also registered multiple domain names, including <franke.com>, which it uses in connection with its official website where it provides information about itself and its products.

The Respondent is an individual resident in China.

The disputed domain name was registered on June 2, 2021. According to evidence presented by the Complainant, it formerly resolved to a website in Chinese that prominently displayed the Complainant’s Franke logo. The website header read “弗兰卡燃气灶售后服务-Franke 中国官网” which may be translated as “Franke gas stove after sales service – Franke China official website”. A menu included tabs regarding electric stoves and gas stoves. The footer mentioned “Franca (China) Kitchen System” [*sic*] and the “Franke Goup” [*sic*].

The Complainant’s legal representative sent a cease-and-desist letter in English to the Respondent on July 28, 2021.

The use of the disputed domain name subsequently changed. It now resolves to a website mainly in Chinese for a third party brand water heater after sales service in Shanghai. The “About” page is in English.

5. Parties’ Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant’s FRANKE trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form. There is no evidence that the Respondent is

known by the dispute domain name or owns any corresponding registered trademarks. The Respondent has not been using, or preparing to use, the disputed domain name in connection with a *bona fide* offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The registration of the disputed domain name – which includes the widely-known FRANKE trademark and the abbreviation of the city name of Shanghai “sh” – aims at creating a direct association with the Complainant's domain name <franke.com> and the presence of the Franke Group in China. The disputed domain name previously resolved to a website mimicking the Franke Group's website associated with the domain name <franke.com> by reproducing its structure as well as textual and design elements and expressly referring to the Franke Group. The disputed domain name now resolves to a website unaffiliated with the Complainant that advertises for sale water heater products that are not FRANKE products.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin characters, includes an English abbreviation “sh”, and the very popular generic Top-Level Domain (“gTLD”) extension “.com”; the associated website was in Chinese but included some English words; and translation of the Complaint into Chinese would entail significant additional costs for the Complainant and delay in the proceeding.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Although the website to which the disputed domain name resolves is in Chinese, its “About” page is entirely in English, from which it is reasonable to infer that the Respondent understands that language. Moreover, despite the Center having sent an email regarding the language of the proceeding, and the notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the FRANKE mark.

The disputed domain name wholly incorporates the FRANKE mark as its initial element. It adds the letters “sh”, which can be understood as an abbreviated reference to the municipality of Shanghai. However, the addition of these letters does not prevent a finding of confusing similarity because the FRANKE mark remains clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.7 and 1.8.

The only other element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, this element need not be taken into consideration in a comparison with a trademark unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark 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 to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As the second element is phrased in the present tense, the Panel will evaluate the existence of any rights or legitimate interests in view of the circumstances prevailing at the time when the Complaint was filed.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website for a water heater after sales service based in Shanghai. The disputed domain name combines the Complainant’s FRANKE mark with an abbreviated reference to the municipality of Shanghai, which risks implying that it will resolve to the website of one of the Complainant’s Shanghai-based affiliates. The Complainant submits that it has not licensed or authorized the Respondent to register or use the disputed

domain name, and that the Respondent is not affiliated with it in any way. Nothing in the content of the website has any apparent connection to the Complainant's FRANKE mark, nor to the operational element of the disputed domain name ("frankesh"). In view of these circumstances, the Panel considers that the Complainant has made a *prima facie* case that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor is he making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar's Whois database as "朱新款 (Zhu XinKuan)" not the disputed domain name. There is no evidence that the Respondent's business has ever been known by the name on the website formerly associated with the disputed domain name, apart from that website itself. The name of the business promoted on the website currently associated with the disputed domain name does not resemble the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain name was registered in 2021, many years after the registration of the Complainant's FRANKE mark, including in China, where the Respondent is resident. The disputed domain name wholly incorporates the FRANKE mark, adding only an abbreviated reference to the municipality of Shanghai ("sh") and a gTLD extension (".com"). The website formerly associated with the disputed domain name displayed the Complainant's Franke logo and the names of one of its Shanghai affiliates and its corporate group (albeit both misspelt). In view of these circumstances, the Panel finds that the Respondent had the Complainant and its FRANKE mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name formerly resolved to a website that was falsely presented as the Complainant's official Chinese website and promoted a gas stove after sales service based in Shanghai. It now resolves to a website for a water heater after sales service in Shanghai. Both types of appliances are related to the Complainant's products. The Panel considers the most likely explanation for the use of the disputed domain name to be that it is intended to divert Internet users searching for the Complainant, even though it would eventually be clear to those who reach the current website that it is not the Complainant's website. Given these circumstances, the Panel considers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 disputed domain name <frankesh.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 20, 2023