

ADMINISTRATIVE PANEL DECISION

Franke Technology and Trademark Ltd v. yangyang
Case No. D2023-3593

1. The Parties

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

The Respondent is yangyang, China.

2. The Domain Name and Registrar

The disputed domain name <frankemerald.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 August 25, 2023. On August 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 29, 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 August 29, 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 August 31, 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 September 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on October 17, 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 business focusing on the kitchen appliances industry, and is registered and existing under the laws of Switzerland. The Complainant is the owner of the trademark FRANKE and owns numerous trademark registrations for FRANKE worldwide (the “FRANKE Mark”), including in the United States of America, the European Union and China. The Complainant has owned the FRANKE mark under international registration number 387826 since February 17, 1972.

The disputed domain name was registered with the Registrar on May 9 2023. It was used in connection with a website that displays content of pornographic nature which appear to involve children.

5. Parties' Contentions

A. Complainant

The Complainant states that it employs over 8,000 persons in 37 countries and has an active business presence in China where the Respondent appears to be located.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant argues that:

- the disputed domain name incorporates the Complainant's registered and widely known trademark FRANKE and that the addition of the term “merald” does not prevent a finding of confusing similarity to the trademark;
- the presence of the generic Top-Level Domain (gTLD) extension “.com” in the first level portion of the disputed domain name is a standard registration requirement and may be disregarded when assessing whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

With regards to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submits that:

- 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 disputed domain name or owns any corresponding registered trademarks;
- the Respondent is also masking its identity on the publicly available Registrar's Whois regarding the disputed domain name and it appears that the Respondent is aiming at hiding its true identity rather than being known by the disputed domain name;
- 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 structure of the disputed domain name – incorporating in its second level portion the FRANKE trademark, the term “merald” and in its first level portion the gTLD “.com” – reflects the Respondent’s intention to create an association, and a subsequent likelihood of confusion, with the Complainant, its FRANKE trademark and its domain name <franke.com> in Internet users’ mind;
- the use of the disputed domain name to operate a child pornography website 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.

Finally, with regards to the disputed domain name having been registered or used in bad faith, the Complainant argues that:

- the FRANKE trademark is widely known;
- the Franke group has a strong presence online and is very active online via its official website and on social medias;
- the Franke group also has an active business presence in China, where the Respondent is located,
- by conducting a simple search online on popular search engines regarding the term “franke” alone, the Respondent would have inevitably learnt about the Complainant, its trademark and business,
- the structure of the disputed domain name shows that the Respondent registered it having the Complainant and its FRANKE trademark in mind and reflects the Respondent’s clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant’s trademark in Internet users’ mind;
- the disputed domain name previously resolved to a website a website displaying content related to pornography which appear to involve children.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three 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 or is being used in bad faith.

A. Identical or Confusingly Similar

In analyzing the first element of the Policy, the panel must first determine whether the complainant has UDRP-relevant rights in a trademark and, secondly, whether the trademark and the disputed domain name are identical or confusingly similar.

The Complainant has demonstrated that it owns multiple trademark registrations for the mark FRANKE prior to the registration of the disputed domain name in various jurisdictions.

The test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. See sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

As set forth in section 1.7 of the [WIPO Overview 3.0](#): “[...] in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark.” (See, e.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy”)).

In the present case the Complainant’s FRANKE mark is reproduced in the disputed domain name its entirety, and is fully recognizable notwithstanding the presence of the additional word “merald” which appears to have no meaning and not to relate to the Respondent’s chosen activities.

The Respondent has not filed a Response in this case and therefore has made no comment regarding either the Complainant’s trademark rights or as to the question of identity or confusing similarity between the disputed domain name.

Finally, it is well accepted in past decisions that the gTLD, such as (e.g., “.com”, “.club”, “.nyc”, “.tech” etc.), is typically to be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name (see section 1.11 of the [WIPO Overview 3.0](#)).

In all of these circumstances the Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant’s FRANKE trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

“(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant *inter alia* stated that it has never given its consent for the Respondent to use its FRANKE trademark in a domain name registration or in any other manner, and that the disputed domain name resolves to a website which displays pornographic content that involves children.

These assertions and the fact that the disputed domain name incorporates the Complainant’s FRANKE trademark in its entirety, are sufficient to establish a *prima facie* case that the Respondent used the disputed domain name for illegal activities and therefore lacks rights or legitimate interests in the disputed domain name.

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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant's allegations and has failed to come forward with any evidence to refute the Complainant's *prima facie* showing that the Respondent lacks rights or legitimate interests.

The Panel therefore concludes that the Respondent lacks rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

The Complainant holds multiple trademark registrations for the FRANKE mark in various jurisdictions that predate the registration of the disputed domain name.

Given that the Complainant's FRANKE marks were widely known around the world and also in China where the Respondent appears to be located long before the registration of the disputed domain and that the disputed domain name contains the FRANKE mark in its entirety, it is more than likely that the Respondent did not coincidentally register the disputed domain name but had previous knowledge of the Complainant's FRANKE marks when registering the disputed domain name.

Moreover, 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. See [WIPO Overview 3.0](#), section 3.1.4; *Wikimedia Foundation, Inc., supra*.

The Panel therefore finds that the Respondent has registered and used the disputed domain name in bad faith and therefore the Complainant also established the third element 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, <frankemerald.com> be cancelled.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: October 31, 2023