

ADMINISTRATIVE PANEL DECISION

Les Parfumeries Fragonard v. Host Master Case No. D2023-4477

1. The Parties

The Complainant is Les Parfumeries Fragonard, France, represented by MIIP MADE IN IP, France.

The Respondent is Host Master, United States of America (the “United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Above.com Pty Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 October 30, 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 November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 24, 2023.

The Center appointed Marilena Comanescu as the sole Panelist in this matter on November 27, 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, Les Parfumeries Fragonard, was established in 1926 in France, Grass, the city which is the basis of the perfumes industry. The Complainant's name was adopted as a tribute to a local famous painter, Jean-Honoré Fragonard.

The Complainant is a manufacturer of perfumes, cosmetics, and homeware, and commercializes its products all over the world directly through a lot of stores and corners using the Fragonard commercial name, by means of mail-order catalogue and via its online store available on the website <fragonard.com>. The Complainant's products are also distributed in prestigious hotels all over the world as gifts for the clients and via a strong international distribution network.

The Complainant owns worldwide trademark registrations for FRAGONARD, such as the following:

- the European Union trademark registration number 012235941 for the word FRAGONARD, filed on October 18, 2013, registered on March 12, 2004, covering goods and services in Nice classes 3, 4, 35; and
- the United States trademark registration number 2026820 for the stylized word FRAGONARD, filed on November 14, 1995, and registered on December 31, 1996, covering goods in Nice class 3.

The disputed domain name was registered on June 14, 2023 and, at the time of filing the Complaint, it was directed on a page that appears to be parked/hosted by the Registrar, with pay-per-click ("PPC") pages with sponsored links.

According to Annex 12 to the Complaint, the Respondent has active MX records attached to the disputed domain name, and it is likely that the public receiving any emails from the disputed domain name would falsely believe they came from the Complainant.

The Respondent has been named as a respondent in not less than 220 UDRP proceedings. See *Sopra Steria Group v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2023-3690](#).

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 to it.

Notably, the Complainant contends that its trademark has a well-known character due to its constant and wide use, the disputed domain name is almost identical to its trademark, being a classic example of typosquatting; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith particularly because: by a simple search on the Internet via Google, it is possible to find that FRAGONARD is a famous trademark in the field of perfumes; the disputed domain name is not actively used but it resolves to a default page of the Registrar; MX records are activated and the public receiving emails from the email address corresponding to the disputed domain name would mistakenly think that such emails come from the Complainant; the Respondent employed a privacy service in order to hide its identity and to avoid being notified of the UDRP proceeding; the Respondent has engaged in a pattern of a cybersquatting behaviour, its name being associated with 138,995 domain names, out of which 27,217 domain names being associated with the company name Transure Enterprise Ltd.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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 the disputed domain name; and
- (iii) the disputed domain name has registered and is being used in bad faith.

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 mark is recognizable within the disputed domain name, being an obvious misspelling of the Complainant's trademark, i.e., a reversing of two letters composing the mark, the "a" and the "r". Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Respondent is using the disputed domain name in connection with PPC pages and, according to the evidence in the Complaint, active MX records are also associated with the disputed domain name. In the event emails were to be sent using the disputed domain name, it is recalled that panels have held that the use of a domain name for illegal activity (such as phishing or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

At the time of filing the Complaint, the disputed domain name resolved to a page providing PPC links.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "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" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's well-known trademark, reproduced with a common obvious misspelling, in order to get traffic on its web portal and to misleadingly divert Internet users to third parties website, and thus to potentially obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

MX records are also associated with the disputed domain name. In the event emails were to be sent using the disputed domain name, it is recalled that panels have held that the use of a domain name for illegal activity (here, claimed phishing activities and impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Respondent did not participate in the present procedure, employed a privacy service, provided inaccurate or incomplete Whois contact details and appears to be a serial cybersquatter. See *Sopra Steria Group v. Host Master, Transure Enterprise Ltd supra*. The Panel finds that being involved in more than two hundred domain names disputes constitutes a pattern of abusive conduct and registration of the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1.2.

Based on the available record, the Panel finds that the Complainant has 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 <fargonard.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: December 7, 2023