

ADMINISTRATIVE PANEL DECISION

FragranceX.com Inc. v. Yang Zhi Chao (杨智超)
Case No. D2023-4754

1. The Parties

The Complainant is FragranceX.com Inc., United States of America (“United States”), represented by SafeNames Ltd, United Kingdom.

The Respondent is Yang Zhi Chao (杨智超), China.

2. The Domain Names and Registrar

The disputed domain names <fragrancecx.com> and <fragrangex.com> (the “Disputed Domain Names”) are registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2023. On November 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On November 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 17, 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 in English on November 20, 2023.

On November 17, 2023, the Center sent an email communication to the Parties in Chinese and English regarding the language of the proceeding. On November 20, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 November 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 22, 2023.

The Center appointed Kar Liang Soh as the sole panelist in this matter on January 8, 2024. 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 an online retail store in 2001 and engages in the selling of perfumes, colognes, lotions, and other cosmetics from various international brands such as Dolce & Gabbana, Calvin Klein, Montblanc, and Versace. The Complainant has been using the trademarks FRAGRANCEX and FRAGRANCEX.COM (the "Complainant's Trademarks") in relation to its online retail services since 2001. The Complainant has established a social media presence under the Complainant's Trademarks, with 1.1 million followers on Facebook and 336,000 followers on Instagram.

The Complainant owns the following trademark registrations in the United States:

Trademark	Registration No.	Registration Date
FRAGRANCEX	5375103	January 9, 2018
FRAGRANCEX.COM	3365121	January 8, 2008

The Complainant registered the domain name <fragrancex.com> in April 2001, and operates a website resolved therefrom which advertises and offers its online retail services.

The Respondent is an individual based in China. Although, very little information about the Respondent beyond the Whois information of the Disputed Domain Names is available, the Respondent's name appears as respondent in numerous successful UDRP complaints (e.g., *Skyscanner Limited v. 杨智超 (yang zhi chao)*, WIPO Case No. [D2023-3983](#); *The White Company (U.K.) Limited v. 杨智超 (yang zhi chao)*, WIPO Case No. [D2023-3118](#); and *Equifax Inc. v. Yang Zhi Chao (杨智超)*, WIPO Case No. [D2023-0533](#)).

The Disputed Domain Names <fragrancex.com> and <fragrangex.com> were registered on June 21, 2022. On or around November 15, 2023, the Disputed Domain Names resolved to parking websites featuring links to third-party websites promoting the sale of perfume products. According to the Complaint, the Respondent also holds 10 other domain name variants of the Disputed Domain Names all of which were also registered on June 21, 2022. The Panel notes that the public Whois information of these domain names has been redacted, but these domain names were registered with the same Registrar on the same day.

The Respondent did not reply to the Complainant's cease and desist letter to the Respondent dated August 17, 2023.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

a) The Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Disputed Domain Names are typosquatting variants of the Complainant's Trademarks.

b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Respondent does not have any registered trademark rights or unregistered trademark rights to use the term “fragrancex” or any other term used in the Disputed Domain Names, or obtained a license from the Complainant to use any domain name featuring the FRAGRANCEX trademark. The Respondent has not used, nor prepared to use, the Disputed Domain Names in connection with a *bona fide* offering of goods and services. The Respondent is neither commonly known by the Disputed Domain Names. The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names.

c) The Disputed Domain Names were registered and are being used in bad faith. The Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s Trademarks. The Respondent failed to respond to the Complainant’s cease and desist letter. The Respondent registered 10 additional typosquatting variants of the Complainant’s Trademarks on June 21, 2022. The Respondent is a serial cybersquatter who has been found to have acted in bad faith in numerous previous UDRP decisions.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreements of the Disputed Domain Names is in Chinese. Accordingly, the default language of the proceeding should be Chinese. However, under paragraph 11 of the Rules, the Panel is empowered to determine a different language of proceeding having regard to the circumstances. Having done so pursuant to the Complainant’s request, the Panel determines that English shall be the language of the proceeding. In making this determination, the Panel has considered the following factors:

- a) the Respondent has chosen not to participate in the proceeding by not filing a Response;
- b) the Disputed Domain Names resolved to websites that are wholly in English, demonstrating the Respondent’s likely competence in the English language;
- c) the Complainant’s representative has informed that the proceeding in Chinese will result in considerable costs and time to translate the Complaint;
- d) the Complaint has already been submitted in English and no obvious procedural benefit would arise should the Panel insist on Chinese being the language of the proceeding. On the contrary, doing so at such an advanced stage of the proceeding would in all likelihood delay the proceeding unnecessarily particularly noting the Respondent did not comment on the language of the proceeding; and
- e) the Panel is bilingual in English and Chinese, and is well-equipped to deal with submissions by the Parties in either language.

6.2 Discussion

The Complainant must establish all three limbs of paragraph 4(a) of the Policy on the facts in order to succeed in this proceeding:

- a) the Disputed Domain Names are identical or confusingly similar to a trademark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in the Disputed Domain Names; and

c) the Disputed Domain Names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademarks by virtue of the trademark registrations. The Disputed Domain Name <fragrancecx.com> contains all the letters of the Complainant's Trademarks but interweaves the letter "c" between the letters "e" and "x". The Disputed Domain Name <fragrangex.com> replaced the first letter "c" in the Complainant's Trademarks with the letter "g".

According to section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), past UDRP panels have established a guideline that domain names which consist of a common, obvious, or intentional misspelling of a trademark to be confusingly similar to the trademark for purposes of the first element of paragraph 4(a) of the Policy. The present case does not present any unusual circumstances which require the Panel to depart from this guideline. The Panel is of the view that the Disputed Domain Names are obvious misspellings of the Complainant's Trademarks. The adding to or replacing of a single letter in the Complainant's Trademarks does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant's Trademarks.

As such, the Panel finds that the Disputed Domain Names are confusingly similar to the Complainant's Trademarks. The first limb of paragraph 4(a) of the Policy is thus established.

B. Rights or Legitimate Interests

The Complainant has asserted that it did not license the Respondent to use any domain name featuring the Complainant's Trademarks. There is no evidence before the Panel to suggest that the Respondent is commonly known by any of the Disputed Domain Names or owns any trademark registrations for the Disputed Domain Names. There is also no evidence that the Disputed Domain Names are being used in a noncommercial or fair manner. On the contrary, the Disputed Domain Names resolve to websites that feature links to third-party websites promoting the sale of perfume products. Hence, the Panel is satisfied that the facts present a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

The Respondent did not file a response to demonstrate any rights or legitimate interests in respect of the Disputed Domain Names, and has thus failed to rebut the *prima facie* case. Therefore, the Complainant has successfully established the second limb of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states 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. In particular, paragraph 4(b)(iv) of the Policy states:

"by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion of 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."

The Disputed Domain Names were registered many years after the registration of the Complainant's Trademarks. On the same day of registering the Disputed Domain Names, the Complainant asserts that the Respondent also registered 10 other typographically variant domain names of the Complainant's Trademarks, which has not been rebutted by the Respondent. The Panel finds the circumstances highly suggestive that the Respondent had intentionally targeted the Complainant's Trademarks for typosquatting.

The evidence shows that the Disputed Domain Names promote the sale of perfumes by referring to third-party websites. The Respondent's intention for commercial gain is patent. The Panel is convinced that the Respondent has selected the Disputed Domain Names to attract Internet users to the websites resolved therefrom by creating a likelihood of confusion to the Complainant's Trademarks. The Complainant has asserted as much in the Complaint and even alleged infringement in the cease and desist letter. An ordinary respondent faced with such severe allegations would have responded strongly if these allegations were not true. The Respondent's lack of response to the Complaint leads the Panel to draw an adverse inference that the Disputed Domain Names were indeed registered and used in bad faith in accordance with the circumstances outlined in paragraph 4(b)(iv) of the Policy.

The Panel further notes the Respondent's prolific and vibrant UDRP experience as a respondent. The Respondent's propensity to engage in such a pattern of bad faith conduct reinforces the Panel's decision in the present case.

In light of the aforementioned circumstances, the Panel is of the opinion that the Disputed Domain Names were registered and are being used in bad faith. Therefore, the Complainant has successfully established the third limb of 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 Names <fragrancecx.com> and <fragrangex.com> be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: January 22, 2024