

ADMINISTRATIVE PANEL DECISION

FragranceX.com Inc. v. Xiao Fang
Case No. D2024-0136

1. The Parties

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

The Respondent is Xiao Fang, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 15, 2024, the Registrar transmitted by email to the Center its verification response registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 16, 2024, 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 January 16, 2024.

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 January 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 6, 2023.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on February 9, 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 was founded in 2001 and since that time it has operated as an online retailer for fragrances and perfumes, through its primary business website “www.fragrancex.com”, which was first registered and used as early as April 2001. The Complainant offers thousands of perfumes, colognes and lotions for sale, including a number of famous brands. The Complainant’s online business has a global reach; its online store currently receives over 3 million visits per month, of which 47% reach the website via direct type-in. The Complainant has a substantial online presence through social media including a Facebook page that has attracted 1.1 million likes. Multiple third-party publications list the Complainant’s online platform as among the best places to purchase perfume products.

The Complainant owns two relevant United States trademark registrations:

- Registration no. 3365121 for the mark FRAGRANCEX.COM, dated January 8, 2008, in Class 35; and
- Registration no. 5375103 for the mark FRAGRANCEX, dated January 9, 2018, in Class 35.

The disputed domain name was registered on April 1, 2023. As of that date, the disputed domain name reverted to an unfinished Shopify online store, advertising an unrealistically discounted Rolex watch. Subsequently, the disputed domain name has reverted to a placeholder page for Shopify, which states “sorry, this store is currently unavailable.”

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.

Notably, the Complainant makes the following submissions and arguments:

The Complainant has been operating a global online perfume and fragrance business for more than 20 years. It has a well-established reputation, in association with its FRAGRANCEX-formative Trademarks.

The disputed domain name is confusingly similar to the Complainant’s trademarks, FRAGRANCEX and FRAGRANCEX.COM as it represents an obvious typo squatting variant of “Fragrancex”.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been commonly known by this name, and has no trademark or common law rights in the name “FragranceX”. The Respondent has not used the disputed domain name for the bona fide offering of goods or services.

The Respondent has deliberately engaged in typo-squatting to target the Complainant’s business; there is no other credible explanation for its choice of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (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 was 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.

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. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Disputed Domain Name consists of the FRAGRANCEX Mark in its entirety, although it is misspelled with an extra letter "e" added at the end. This kind of minor modification to a disputed domain name is commonly referred to as "typosquatting". The slight misspelling of the mark does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element"). See also *FragranceX.com, Inc. v. Yang Zhi Cho*, WIPO Case No. [D2023-4754](#).

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 evidentiary 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 evidence shows the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its FRAGRANCEX Mark. Further, the Complainant establishes that it does not have any type of business

relationship with the Respondent. Finally, the Respondent is not commonly known by the disputed domain name or by any similar name, and there is no evidence that the Respondent was using or making demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. 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. See Policy, paragraph 4(c).

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.

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.

In the present case, the Panel notes that the Respondent must have known that the Complainant had rights in the FRAGRANCEX mark when registering the disputed domain name, which is indicative of bad faith registration and use. The circumstances show that the Respondent was targeting the Complainant and its well-known trademarks, as evidenced by the obvious misspelling of the FRAGRANCEX mark as used in the disputed domain name. See *FragranceX.com, Inc. v. Argoweb Corp et al*, WIPO Case No. [D2010-1237](#) and *Arista Networks Inc. v. James Lanman, wolverineflexo*, WIPO Case No. [D2023-5178](#).

Previously, the disputed domain name reverted to an unfinished Shopify online store, advertising an unrealistically discounted Rolex watch. In the circumstances of this case, the Panel finds that the Respondent has used the disputed domain name in bad faith.

Subsequently, the disputed domain name has reverted to a placeholder page for Shopify, which states "sorry, this store is currently unavailable". Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and the extensive reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 <fragrancexe.com> be transferred to the Complainant.

/Christopher J. Pibus/

Christopher J. Pibus

Sole Panelist

Date: February 23, 2024