

ADMINISTRATIVE PANEL DECISION

FragranceX.com Inc. v. haizi lo
Case No. D2024-0254

1. The Parties

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

The Respondent is haizi lo, China.

2. The Domain Name and Registrar

The disputed domain name <frsgrancex.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 22, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On January 26, 2024, the Center informed the parties in Japanese and English, that the language of the registration agreement for the disputed domain name is Japanese. On January 26, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the 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 in English and Japanese the Respondent of the Complaint, and the proceedings commenced on February 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 11, 2024.

The Center appointed Masato Dogauchi as the sole panelist in this matter on March 13, 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant was founded in 2001 and is doing business of online outlets for fragrances. The Complainant sells authentic perfumes, colognes, lotions, and other cosmetics from famous brands. All of these products are available on its website at "fragrancex.com. It is estimated that the Complainant's online store receives over 3 million visits per month, around 47% of which landed on the website via direct type-in.

The Complainant is the owner of the FRAGRANCEX and FRAGRANCEX.COM trademarks as follows:

- United States Registration No. 5375103 (FRAGRANCEX), registered on January 9, 2018;
- United States Registration No. 3365121 (FRAGRANCEX.COM), registered on January 8, 2008.

And, as stated above, the Complainant owns a generic Top-Level domain name <fragrancex.com>, registered on April 14, 2001.

The disputed domain name, registered on February 4, 2019, initially hosted a website featuring pay-per-click ("PPC") links. Subsequently, it resolved to a website offering the disputed domain name for sale in English.

The Complainant sent to the Respondent a cease-and-desist letter on October 17, 2023. The Respondent responded to this letter by asking for USD 288 on the same day, then denied ownership of the disputed domain name on October 24, 2023.

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.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines in accordance with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.5.1, that the language of this proceeding shall be English rather than Japanese on the following grounds:

- The Complainant requested to that effect;
- The disputed domain name resolves to a website offering for sale in English;
- The Respondent replied in English to the Complainant's cease and desist letter;
- The Respondent surely has become aware of this case filed by the Complainant on the ground that he/she did not reply to the notification in both English and Japanese by the Center that the Respondent was invited to indicate its objection, if any, to the Complainant's request for the language by the specified due date; and
- The use of Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the FRAGRANCEX and FRAGRANCEX.COM trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The main part of the disputed domain name before generic Top-Level Domain ("gTLD") ".com", is "frsgrancex", which is different from the Complainant's FRAGRANCEX trademark in that the third letter only. In addition, the letters "a" and "s" are adjacent keyboard letters. This is a typical example of typosquatting. [WIPO Overview 3.0](#), section 1.9.

Accordingly, the disputed domain name is determined to be confusingly similar to the Complainant's trademarks for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

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 even denied ownership of the disputed domain name in the email to the Complainant on October 24, 2023.

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, in consideration of the fact that the Complainant has been doing business of online outlets for fragrances since 2001, and that the Complainant’s online store receives over 3 million visits per month at present, it is highly unlikely that the Respondent could have been unaware of the Complainant’s trademarks at the time of registration of the disputed domain name on February 4, 2019. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the Panel considers the fact that the Respondent offered the disputed domain name for sale in the reply to the Complainant’s cease-and-desist notice by email to the can be an evidence of bad faith use. [WIPO Overview 3.0](#), section 3.6.

Since the Respondent did not reply to the Complaint in this proceeding and noting the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Panel finds the third element of the Policy has been established.

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 <frsgrancex.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: March 15, 2024