

ADMINISTRATIVE PANEL DECISION

Fresh Clean Threads, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2024-0496

1. The Parties

The Complainant is Fresh Clean Threads, Inc., United States of America, represented by Sheppard, Mullin, Richter & Hampton, United States of America (“US”).

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <freshcleantthreads.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 5, 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 February 9, 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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2024.

The Center appointed Áron László as the sole panelist in this matter on March 18, 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, a La Jolla (TX) US firm was founded in 2015. The Complainant is active in the apparel industry, offering comfortable, affordable, and sustainable clothing through a subscription service and an online retail store.

The Complainant is the owner of several trademarks (the “Marks”) including:

- FRESH CLEAN TEES (word) US federal trademark Reg. No. 5703226, registered on March 19, 2019;
- FRESH CLEAN (word) US federal trademark Reg. No. 6617970, registered on January 18, 2022;
- FRESH CLEAN THREADS (word) US federal trademark Reg. No. 7020729, registered on April 4, 2023.

The Complainant owns, amongst others, several Canadian, United Kingdom and European Union trademarks and has International Registrations covering the same signs.

The Complainant owns the domain names <freshcleantees.com>, <freshcleantees.ca>, and <freshcleanthreads.com>. The Complainant has operated “www.freshcleantees.com” since at least as early as November 2015.

The disputed domain name was registered on October 26, 2023. The Respondent concealed her identity and registered the disputed domain name using a privacy service, Domains By Proxy, LLC.

At the time of filing of the Complaint, the disputed domain name was offered for sale for USD 1,499. The disputed domain name currently resolves to a pay-per-click (“PPC”) website.

The Respondent has been involved in hundreds of UDRP proceedings filed against her. The domain names have been either transferred or cancelled in all of these proceedings.

5. Parties’ Contentions

The Complainant supplemented its allegations after learning the Respondent’s identity and added an argument based on a pattern of conduct.

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 contends that disputed domain name is identical or confusingly similar to trademarks in which Complainant has rights. The disputed domain name contains the Complainant’s trademark FRESH CLEAN in its entirety, and also differs from the Complainant’s trademark FRESH CLEAN THREADS by only one letter, which is in fact typosquatting. The generic Top-Level Domain “.com” suffix is disregarded as regards the first element (see *Lamprecht v. Registration [1690] com fma Future Media Architects, Inc.*, WIPO Case No. [D2009-1778](#)), since the gTLD “.com” suffix is generally understood to stand for “commercial” and serves a functional purpose within any domain name. Therefore, consumers generally disregard “.com” as a generic term and only take note of the other words contained in the domain name. Respondent has no rights or legitimate interests with respect to the disputed domain name.

The Respondent is not an agent of the Complainant, has no business relationship with the Complainant, does not have a licence to use the FRESH CLEAN Marks, and has not been authorised by the Complainant to register a domain name containing the Marks. Further, the Respondent is not commonly known by the disputed domain name and the Respondent has not used or demonstrably prepared to use the disputed domain name in connection with a bona fide offering of goods or services. There is no real content on the disputed domain name being offered for sale. In the absence of content, the Respondent cannot use the disputed domain name for legitimate noncommercial or fair use without intent to make a commercial profit because it merely points to an inactive website.

As to the third element, the disputed domain name was registered in bad faith, as it was registered almost 8 years after the Complainant first began using the FRESH CLEAN marks (the Respondent may be found to have registered and used the disputed domain name in bad faith if the Respondent knew or should have known of the existence of the Complainant's trademark rights). In addition, the disputed domain name is confusingly similar to the Complainant's own domain names, which also indicates bad faith. Finally, the act of "typosquatting" or registering a domain name that is a common misspelling of a trademark in which a party has rights has often been recognised as evidence of bad faith registration per se.

The disputed domain name is also being used in bad faith, as it entirely incorporates the Complainant's FRESH CLEAN Mark, as well as a misspelling of its FRES CLEAN THREADS Mark. Further, the Respondent has used the disputed domain name in bad faith by offering the same for sale to the public at a high price. The Respondent has maintained registration of the disputed domain name using a registration privacy service, which is also an indication of bad faith. Lastly, the Respondent has been engaged in hundreds of UDRP proceedings filed against her.

B. Respondent

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

6. Discussion and Findings

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 entirety of the mark FRESH CLEAN is reproduced 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 Panel finds the mark FRESH CLEAN THREADS 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.

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. In particular, the letter "t" in the disputed domain name (the last word of which is "-tthreads" instead of "-threads") is next to the letter "r" on computer keyboards, which correctly spells the word "threads". [WIPO Overview 3.0](#), Section 1.9.

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.

Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

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 has been offering the disputed domain name for a price of USD 1499, on the Registrar’s website. Under UDRP paragraph 4(b)(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name. The price, USD 1499, likely exceeds the Respondent’s costs associated with the registration or acquisition of the disputed domain name.

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.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the mere offering of PPC links on the website available through the disputed domain name amounts to bad faith under the Policy.

With respect to “automatically” generated PPC links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the Respondent itself may not have directly profited, would by itself prevent a finding of bad faith.

The disputed domain name was registered almost 8 years after the Complainant first began using the FRESH CLEAN Marks. The Complainant's trademarks have gained high distinctiveness and repute during these 8 years. At that time when the Respondent registered the disputed domain name, the Respondent must have had knowledge of Complainant's FRESH CLEAN Marks. Therefore, the Panel considers this circumstance and an indication of registration in bad faith.

The disputed domain name is a common misspelling of the mark FRESH CLEAN THREADS, where letters "r" and "t" in "threads" and "thtreads" are next to each other on computer keyboards. The same one-letter difference applies as opposed to the Complainant's domain name <freshcleanthreads.com>. Thereby, it is likely that by using the disputed domain name the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. The act of "typosquatting" or registering a domain name that is a common misspelling of a mark in which a party has rights has often been recognized as evidence of bad faith registration per se. See, e.g., *Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#); *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting", of itself, is evidence of the bad faith registration of a domain name). Therefore, the Panel is of the opinion that this circumstance is an indication of bad faith registration and use. The fact that the Respondent have maintained the registration of the disputed domain name using a registration privacy service affirms the Panel's finding of bad faith in the circumstances of the proceeding (particularly noting the typosquatting nature of the disputed domain name).

Finally, the Respondent has been involved in hundreds of UDRP proceedings filed against it.

Indeed, the Respondent has already been found to have "engaged in a pattern of bad faith registrations of domain names corresponding to third-party trademarks". "Such finding bolsters the impression of bad faith in the present proceeding." *Oney Bank v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-0094](#).

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 <freshcleanthtreads.com> be transferred to the Complainant.

/Áron László/
Áron László
Sole Panelist
Date: April 1, 2024