

ADMINISTRATIVE PANEL DECISION

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

Case No. D2024-2086

1. The Parties

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

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

2. The Domain Name and Registrar

The disputed domain name <freshcleantjreads.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 May 17, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 21, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 May 24, 2024. The Center sent an email communication to the Complainant on May 29, 2024, clarifying the principal office of the Registrar. The Complainant filed a further amended Complaint on May 29, 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 June 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 24, 2024.

The Center appointed Gill Mansfield as the sole Panelist in this matter on June 28, 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 is a corporation organized under the laws of the State of Delaware, United States. It was founded in 2015 and operates in the apparel industry selling clothing through subscription services and through an online store via a website located at "www.freshcleantees.com".

The Complainant is the owner of various FRESH CLEAN and FRESH CLEAN-formative trademark registrations, including inter alia the following registrations:

- United States trademark registration number 5260952 for FRESH CLEAN TEES(figurative mark) registered on August 8, 2017) in class 35;
- United States trademark registration number 6617970 for FRESH CLEAN (word mark) registered on January 18, 2022, in class 35;
- United States trademark registration number 7020729 for FRESH CLEAN THREADS (word mark) registered on April 4, 2023, in classes 25 and 35;

The Complainant owns the domain names <freshcleantees.com>, <freshcleantees.ca>, and <freshcleanthreads.com>.

The disputed domain name was registered on May 1, 2024, and at the time of the Complaint resolved to a parked page with pay-per-click ("PPC") links.

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 contends that the disputed domain name is nearly identical and confusingly similar to the Complainant's FRESH CLEAN trademarks, as the disputed domain name incorporates the whole of the FRESH CLEAN trademark as well as a confusingly similar misspelling of the FRESH CLEAN THREADS trademark where the "H" in THREADS is replaced with a "J". In addition, the Complainant asserts that as the disputed domain name is confusingly similar to the Complainant's trademarks, consumers may believe that they have arrived at one of the Complainant's websites, or wrongly believe that the Respondent's website is endorsed, authorized, sponsored by, or affiliated with, the Complainant.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. Although the Complainant does not know the true identity of the Respondent, the Complainant states that it is certain that the Respondent is not a representative of the Complainant, has no business relationship with the Complainant, does not have a licence to use the FRESH CLEAN trademarks and is not authorized by the Complainant to register any domain name incorporating the FRESH CLEAN trademarks. The disputed domain name was registered without the Complainant's knowledge or permission. The Complainant further asserts the Respondent is not commonly known by the disputed domain name, has not used or made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, and has not and is not using the disputed domain name for a legitimate noncommercial or fair use without intend for commercial gain.

The Complainant states that the disputed domain name was registered in bad faith, being registered over 8 years after the Complainant started to use the FRESH CLEAN trademarks, and as such the Respondent would have had constructive knowledge of the Complainant's trademarks. It also asserts that the disputed domain name is confusingly similar to the Complainant's own domain names suggesting bad faith, and that the act of "typosquatting" is evidence of bad faith registration.

The Complainant contends that the disputed domain name is being used in bad faith as it entirely incorporates the Complainant's FRESH CLEAN trademark, as well as a misspelling of the Complainant's FRESH CLEAN THREADS trademark. Additionally, the fact that the disputed domain name resolves to a parked page with sponsored links constitutes bad faith. Finally, the Complainant states that the Respondent has had hundreds of UDRP proceedings filed against it, including a case relating to the Complainant's trademarks. The Respondent is therefore aware of the Complainant and the Complainant's trademarks and has previously been found to have engaged in a pattern of bad faith registrations.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- (iii) that 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 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 FRESH CLEAN mark 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.

Although the addition of other terms (here, in relation to the FRESH CLEAN mark, <tjreads>) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In addition, the disputed domain name is a misspelling of the FRESH CLEAN THREADS mark where the "H" in THREADS has been replaced with a "J". A domain name which consists of a common, obvious, or intentional misspelling of a trademark (i.e. typosquatting) is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. [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.

In particular, the Respondent is not a representative of the Complainant, has no business relationship with the Complainant, is not licensed by the Complainant to use its trademarks, and is not authorized to register any domain names incorporating the Complainant’s trademarks. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use, or demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services. There is also no evidence of legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name is a common misspelling of the Complainant’s FRESH CLEAN THREADS trademark. The Panel notes that one of the Complainant’s registered domain names is <freshcleanthreads.com> and that the Complainant’s corporate identity is Fresh Clean Threads, Inc. The Panel finds that this is an instance of typosquatting. Panels have recognized that typosquatting is a further indication of a lack of rights and legitimate interests in a domain name.

Panels have previously found that the use of a domain name to host a parked page comprising of 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. [WIPO Overview 3.0](#), section 2.9.

Moreover, the construction of the disputed domain name itself is such to carry a risk of implied affiliation that cannot constitute fair use. The Panel finds that the subtle misspelling of the Complainant’s FRESH CLEAN THREADS trademark in the disputed domain name is intended to impersonate the Complainant, and there is a risk that Internet users will not notice the difference between such misspelling and the Complainant’s mark.

According to paragraph 14(b) of the Rules, the Panel may draw from the lack of response of the Respondent such inferences as it considers appropriate. The Panel is of the view that the lack of response from the Respondent corroborates the absence of any rights or legitimate interests of the Respondent in the disputed domain name.

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.

Having reviewed the available record, the Panel is satisfied that the Complainant has demonstrated a pattern of abusive domain name registrations by the Respondent, such as to constitute a pattern of bad faith conduct on the part of the Respondent under clause 4(b)(ii) of the Policy. That pattern of bad faith registrations of domain names corresponding to third-party trademarks supports a finding of bad faith in respect of this Complaint. Further, that pattern of abusive domain name registrations by the Respondent includes an earlier proceeding relating to the Complainant's FRESH CLEAN and FRESH CLEAN THREADS trademarks (see *Fresh Clean Threads, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronica*, WIPO Case No. [D2024-0496](#)).

The disputed domain name was registered more than 7 years after the Complainant's first trademark registration in 2017. Having reviewed the available record, the Panel notes the goodwill and reputation that the Complainant's trademarks have acquired.

The Panel finds that, given that background, it is implausible that the Respondent was unaware of the Complainant and the Complainant's FRESH CLEAN and FRESH CLEAN THREADS trademarks when registering the disputed domain name.

In addition, the disputed domain name is a common misspelling of the FRESH CLEAN THREADS trademark where the letter "H" in THREADS is substituted for the letter "J". The Panel finds that the Respondent has targeted the Complainant's well-known FRESH CLEAN THREADS trademark and <freshcleantreads.com> domain name in an act of typosquatting. Panels have previously found that typosquatting can be evidence of bad faith registration and use.

The fact that the disputed domain name resolves to a parked page containing PPC links constitutes bad faith under paragraph 4(b)(iv) of the Policy. The Panel finds that 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 did not submit a Response in these proceedings, or provide any evidence of actual or contemplated good faith use, which is a further indicator of the Respondent's bad faith and was considered by the Panel.

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 <freshcleantreads.com> be transferred to the Complainant.

/Gill Mansfield/

Gill Mansfield

Sole Panelist

Date: July 12, 2024