

## **ADMINISTRATIVE PANEL DECISION**

Les Parfumeries Fragonard v. Abderrahim Oubarka, Boosti  
Case No. D2024-2252

### **1. The Parties**

The Complainant is Les Parfumeries Fragonard, France, represented by MIIP MADE IN IP, France.

The Respondent is Abderrahim Oubarka, Boosti, Morocco.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2024. On June 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 4, 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 the same day.

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 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2024. The Respondent sent an email communication to the Center on June 5, 2024.

The Center appointed Fabrizio Bedarida 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 in this administrative proceeding is Les Parfumeries Fragonard, a French company headquartered in Grasse, France.

The Complainant is the owner of numerous trademark rights composed of or including the denomination “Fragonard”, filed worldwide, notably in the cosmetic field and particularly for perfumery products. The Complainant has included in the Complaint a full list of such trademarks registered in jurisdictions around the world.

The Complainant is, inter alia, the owner of:

- French trademark “FRAGONARD” (word), registration number 1327342 and registered on October 18, 1985.
- European Union Trademark FRAGONARD (word), registration number 012235941, registered on March 3, 2014;
- International Trademark FRAGONARD, registration number 312110, registered on April 15, 1966.

The Complainant has also included in the Complaint a list of numerous domain name registrations composed of or including FRAGONARD.

The disputed domain name was registered on May 22, 2024.

Currently the disputed domain name resolves to what appears to be an unfinished website purportedly offering a variety of products, and using several languages (English, French and Arabic). Mail exchanger (“MX”) records have been set up for the disputed domain name.

#### **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 identical to the Complainant’s FRAGONARD trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and particularly that the Respondent registered and used the disputed domain name in order to capitalize on and take advantage of the renown of the Complainant’s trademark, aiming to unlawfully profit through this use. In addition, the Complainant submits that the presence of mail exchange (MX) records suggests the Respondent could engage in harmful activity through email distribution, given the evidently implied affiliation with the disputed domain name and the Complainant’s trademark.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. Indeed, in its informal email dated June 5, 2024, the Respondent merely affirmed it registered the disputed domain name “for the Store” (maybe meaning

for an online store) without knowledge of the Complainant, and that it was willing to transfer the disputed domain name for an unspecified price.

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights;
- (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 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 is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [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.

In addition, the Panel notes that the composition of the disputed domain name, being identical to the Complainant's FRAGONARD trademark and almost identical to the Complainant's official domain name <fragonard.com>, carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

### 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.

Further, it should be noted that Panels have consistently found that the mere registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

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.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered FRAGONARD trademark, and is also almost identical to the Complainant's domain name <fragonard.com>.

Taking into account the composition of the disputed domain name (identical the Complainant's trademark), the Panel is satisfied that the Respondent knew of the Complainant's trademark FRAGONARD when it registered the disputed domain name (see *Les Parfumeries Fragonard v. Thanh Van Pham*, WIPO Case No. [D2020-2920](#) ("The Respondent registered the disputed domain name long after the Complainant first used and registered its FRAGONARD mark, and long after the mark had become well recognized around the world. Inclusion of the Complainant's precise mark in the disputed domain name suggests that the Respondent was aware of the Complainant's prior rights"); *Les Parfumeries Fragonard v. Yasutaka Sakatani*, WIPO Case No. [D2021-0792](#) ("The Complainant's trademark is a well-known trademark as established by prior UDRP decisions. It had been registered for more than 50 years by the time the disputed domain name was registered").

In any case, a simple search on the web for "Fragonard", which has no generic meaning, would have immediately revealed the existence of the Complainant, its activity and rights. It therefore appears very unlikely that the Respondent registered the disputed domain name without being aware of the Complainant's trademark.

The disputed domain name redirects to a website purporting to offer a variety of products for sale. However, this website seems to be unfinished, and in fact it is more likely than not, not possible to order the goods on offer. Nevertheless, MX records have been set up for the disputed domain name.

As stated in *CKM Holdings Inc. v. Grant Chonko, Genesis Biosciences*, WIPO Case No. [D2022-0479](#): "A MX record is a resource record in the domain name system specifying which email server is responsible for accepting email on behalf of a domain name. It is not necessary to assign MX records to a domain name if the registrant does not intend to use the domain name to send and receive email. Activating the MX records to designate an email server and enable email is an action beyond mere registration of the Disputed Domain Name and may constitute bad faith use." It is not clear if the Respondent took this action, or it may be a Registrar default, but without the benefit of a Response, the Panel has no information from the Respondent to the contrary.

Finally, the Respondent's failure to respond to the Complainant's allegations made in this proceeding regarding its bad faith in registering and using the disputed domain name, together with its request to be paid to transfer the disputed domain name to the Complainant, can be seen as further indication of bad faith.

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 <fragonard.site> be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: July 12, 2024