

ADMINISTRATIVE PANEL DECISION

Les Parfumeries Fragonard v. Pimniti Thummultri
Case No. D2024-2279

1. The Parties

The Complainant is Les Parfumeries Fragonard, France, represented by MIIP – Made in IP, France.

The Respondent is Pimniti Thummultri, Thailand.

2. The Domain Name and Registrar

The disputed domain name <musee-parfum-paris-fragonard.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2024. On June 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 4, 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 (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 June 6, 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 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 3, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on July 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 1926, and operates in the field of cosmetics, as well as in a number of museums in the field of perfumery. The Complainant evolved over the years from a small artisan perfumery and manufacturing workshop to a business that encompasses three factories, 24 boutiques, and six museums related to perfume, one of them located in Paris. The Complainant's products include fragrances, skincare products, clothing and fashion accessories, as well as home textiles and fragrances, both internationally commercialized through stores and corners under the FRAGONARD mark, mail-ordered by means of a mail-order catalogues, and online through its corporate website at "www.fragonard.com". The Panel under its general powers articulated, inter alia, in paragraph 10 of the Rules, has consulted the Complainant's corporate website.

The Complainant operates under the brand FRAGONARD, as well as various brands including the term "Fragonard", such as MUSEE FRAGONARD, and it owns numerous trademark registrations for these brands including:

- International Trademark Registration No. 312110, FRAGONARD, word, registered on April 15, 1966, in classes 3, 8, and 21;
- European Union Trademark Registration No. 012235941, FRAGONARD, word, registered on March 12, 2014, in classes 3, 4, and 35;
- French Trademark Registration No. 1327342, "FRAGONARD", word, registered on October 18, 1985, in class 3; and
- French Trademark Registration No. 3682722, MUSEE FRAGONARD, word, registered on October 12, 2009, in classes 16, 35, and 41;

(hereinafter the "FRAGONARD mark" and the "MUSEE FRAGONARD mark", respectively).

Prior decisions under the Policy have recognized the international reputation and well-known character of the FRAGONARD mark in the cosmetic filed. ¹

The Complainant further owns numerous domain names corresponding to its trademarks, including <fragonard.com> (registered on March 10, 1997), which resolves to its corporate website, and other domain names that are redirected to this site. The Complainant cites up to 99 domain names including <parfumeriesfragonard.com>, <nouveaumuseefragonard.com>, <fragonard.paris>, <museeparfum.com>, <museehistoriqueduparfum.com>, <musee-historique-du-parfum.com>, <muséeduparfumfragonard.com>, and <museeparfumparis.fr>.

The Complainant's "The Musée du Parfum" in Paris is promoted through the website at <musee-parfum-paris.fragonard.com>.

The disputed domain name was registered on May 13, 2024, and it is currently apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed

¹See, among others, *Les Parfumeries Fragonard v. Thanh Van Pham*, WIPO Case No. [D2020-2920](#); *Les Parfumeries Fragonard v. Host Master*, WIPO Case No. [D2023-4477](#); or *Les Parfumeries Fragonard v. Stanislav Petryashov*, WIPO Case No. [D2019-1088](#).

domain name previously resolved to a gambling website, in Thai language, that included at its heading the English terms “slot auto wallet”, and purportedly offered access to various gambling and casino platforms.

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 reproduces the FRAGONARD and MUSEE FRAGONARD marks, and it is confusingly similar to these prior rights. The adjunction of the words “parfum”, “musee” and “paris” in the disputed domain name refers to the Complainant’s museum in Paris or leads the consumers to think that the Complainant has opened a new museum in Paris that is promoted through the disputed domain name. A search over the Internet for these terms leads to results related to the Complainant, the first result being a link to the website of its Perfume Museum of Paris. The generic Top Level Domain (“gTLD”) “.com” must not be taken into consideration when examining the first element of the Policy, and adding the gTLD is insufficient to avoid a finding of confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. A trademark search reveals the Respondent has no trademark rights over the term “Fragonard”, there is no relationship between the Parties, and the Respondent is not authorized to use the Complainant’s trademarks. The disputed domain name has been used in connection to a gambling website; the unauthorized use of a domain name containing a well-known third-party trademark for such services cannot be considered a bona fide offering of goods or services.

The disputed domain name was registered and is being used in bad faith. The FRAGONARD mark and the MUSEE FRAGONARD mark are well known in the field of cosmetics and also the Complainant’s museums, are well known. Its first museum was established in Grasse in 1975, and its Paris museum (the “Musée du Parfum”) is visited by many tourists coming from all over the world and promoted through the site at <musee-parfum-paris.fragonard.com>. Any trademark search or any search over the Internet reveals the Complainant and its trademarks, so the Respondent could not have ignored them and must have registered the disputed domain name targeting these prior rights. The registration and use of the disputed domain name reveals an intention to divert Internet users for commercial gain, thereby disrupting the Complainant’s business. The Respondent used a privacy service to hide its identity.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

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 trademarks FRAGONARD and MUSEE FRAGONARD are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "parfum" and "Paris", may bear on assessment of the second and third elements, the Panel finds the addition of such terms as well as the hyphens do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, 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 Panel finds no evidence in the record that may suggest the Respondent has rights or legitimate interests in respect of the disputed domain name.

The Panel notes the term "fragonard" is a French surname with no dictionary meaning, and it does not share any similarities with the Respondent's name revealed by the Registrar verification. According to the Complainant, "Fragonard" is the surname of a well-known painter homegrown in the same city where the Complainant was founded and has its main center of operations (Grasse, France). The name was adopted as a trademark by the Complainant to honor the memory of this painter.

The Panel further notes the disputed domain name is apparently inactive, however, according to the evidence provided by the Complainant, it has been previously used to resolve to a gambling website that shared no connection with the Complainant or its products, included at its heading the terms "slot auto wallet", and purportedly offered access to various gambling and casino platforms. The unauthorized use of a third party reputed trademark in connection with a website unrelated to this mark cannot be considered a bona fide offering of goods or services under the Policy, and suggests opportunistic bad faith; it suggests the use of the disputed domain name to increase the traffic by generating Internet user confusion.

The Panel finds the composition of the disputed domain name indicates targeting of the Complainant, and of its domain name, and generates confusion with the Complainant, its trademarks, and its business. Particularly with its reputed Paris museum, the “Musée du Parfum”, and the official site of this museum at <musee-parfum-paris.fragonard.com> to which the disputed domain name is almost identical. The disputed domain name gives the impression of being owned by or referring to the Complainant’s museum. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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 FRAGONARD and the MUSEE FRAGONARD marks are internationally used, sufficiently distinctive for the products and services in the field of perfumery and museums related to perfumery, as well as widely known in the field of cosmetics. Prior decisions under the Policy have recognized the international notoriety of the FRAGONARD Mark. ²

The Panel further notes nothing in the record indicates the Respondent has rights or legitimate interests in respect of the disputed domain name, and the term “fragonard” shares no similarities with the Respondent’s name.

The Panel thus finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith.

As regards the current use of the disputed domain name, the Panel considers that bad faith may exist even in cases of “passive holding”, as found in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Consequently, in the circumstances of this case, the Panel finds that the current passive holding of the disputed domain name does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In support of this finding, the Panel considers as relevant the international use and notoriety of the FRAGONARD and the MUSEE FRAGONARD marks, the incorporation of these distinctive trademarks in the disputed domain name as well as terms that refer to the Complainant and its museum in Paris, and the Respondent’s failure to participate in this proceeding.

Furthermore, the prior unauthorized use of the disputed domain name in connection with a gambling website that shares no connection with the Complainant, its products or its museums, suggests opportunistic bad faith; it suggests the Respondent’s intention to increase the traffic to his website by creating a likelihood of confusion with the Complainant, its trademarks, and its domain name.

The Panel considers the nature of the disputed domain name, which is confusingly similar to the FRAGONARD and the MUSEE FRAGONARD marks and almost identical to the Complainant’s Paris museum site at the domain name <musee-parfum-paris.fragonard.com>, reflects the purposeful composition of the disputed domain name targeting the Complainant and its trademarks to generate confusion and create a misleading domain name. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

Accordingly, based on the evidence presented, the Panel finds the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has established the third element of the Policy.

²See Footnote No. 1, *supra*.

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 <musee-parfum-paris-fragonard.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: July 22, 2024