

ADMINISTRATIVE PANEL DECISION

Les Parfumeries Fragonard v. KhnatAbdelhalim,
Eman Productscosmetics
Case No. D2024-3073

1. The Parties

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

The Respondent is KhnatAbdelhalim, Eman Productscosmetics, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <my-fragonard.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2024. On July 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 30, 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 July 31, 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 August 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 4, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on September 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

The Complainant was founded in 1926 and is commercially active in the field of cosmetics. It offers a wide range of fragrances and skincare products, but also clothing and fashion accessories and home textiles.

The Complainant is the registered owner of the long-standing FRAGONARD trademark. Among others, the Complainant is the owner of the International Trademark Registration 312110, registered on April 15, 1996, for FRAGONARD, covering protection for various goods and services in class 3, 8 and 21.

The Complainant further operates its official website at “www.fragonard.com”.

The disputed domain name was registered on July 10, 2024.

According to the provided screenshots in the Complaint, the disputed domain name resolves to a website prominently using the FRAGONARD trademark, allegedly offering unspecified bio products, e.g. health supplements. The associated website appears unfinished and uses various languages at the same time.

Furthermore, as demonstrated by the Complainant in its Complaint, the Respondent configured a Mail Exchange (“MX”) email server for the disputed domain name, which enables the Respondent to send and receive emails using 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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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 FRAGONARD trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the FRAGONARD mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the FRAGONARD mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms and signs, here "my" in combination with a hyphen, may bear on assessment of the second and third elements, the Panel finds that such addition 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.

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.

Even more, and bearing in mind that the Respondent has configured an MX email server for the disputed domain name, the Panel cannot exclude that the disputed domain name, which comprises the FRAGONARD trademark in its entirety, may already have been used or will be used in connection with possibly fraudulent

or illegitimate activities by the Respondent. Panels have held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, considering that the disputed domain name comprises the Complainant's trademark in its entirety with the term "my", the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its FRAGONARD trademark in mind when registering the disputed domain name. Noting the confusingly similar nature of the disputed domain name, comprising the Complainant's FRAGONARD trademark in its entirety, it is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

As regards bad faith use, the Panel notes that the disputed domain name resolves to an unfinished website which prominently uses the FRAGONARD trademark, without authorization, to offer third party goods.

In addition, the Panel believes that the active MX email server for the confusingly similar disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name may be used by the Respondent to mislead customers of the Complainant looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, likely for fraudulent activities.

Also, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith use in this case.

All in all, the Panel concludes that the Respondent's registration and use of the disputed domain name constitute bad faith under the Policy.

Accordingly, 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 <my-fragonard.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 27, 2024