

ADMINISTRATIVE PANEL DECISION

Frankie Shop LLC v. Marquita Couture, and Maria Valencia
Case No. D2024-4104

1. The Parties

The Complainant is Frankie Shop LLC, United States of America (“United States”), represented by Coblence Avocats, France.

The Respondents are Marquita Couture, United States, and Maria Valencia, United States.

2. The Domain Names and Registrar

The disputed domain names <thefrankieshopsale.shop> and <thefrankieshopwholesale.shop> are both registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Wilayah Persekutuan, MY) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 8, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all disputed domain names are under common control. The Complainant filed an amendment to the Complaint on October 9, 2024.

The Center verified that the Complaint together with the amendment to the 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 Respondents of the Complaint, and the proceedings commenced on October 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 31, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on November 6, 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 company established on May 4, 2015, specializing in the sale of clothing, accessories, women's shoes, and cosmetics under the trademark THE FRANKIE SHOP through the website at "www.thefrankieshop.com" to consumers around the world including the United States, the United Kingdom, the European Union, Canada, Switzerland, Türkiye, Brazil, Chile, Japan, Kuwait, Peru, and Uruguay. The Complainant has used the THE FRANKIE SHOP mark since 2015 and owns the following trademark registrations to the mark: International Trademark Registration Number 1648994 registered on October 12, 2021, French Trademark Registration Number 4762800 registered on August 9, 2024, and United States Trademark Registration Number 7028712 registered on April 18, 2023.

The Respondents appear to be individuals with addresses in the United States.

The disputed domain name <thefrankieshopsale.shop> was registered on September 14, 2024 and the disputed domain name <thefrankieshopwholesale.shop> was registered on August 19, 2024. As of the date of the Complaint, both disputed domain names resolved to very similar websites displaying the Complainant's THE FRANKIE SHOP mark, using the product images and product names shown on the Complainant's website, and purportedly offering for sale the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the mark in which the Complainant has rights since the disputed domain names contain the Complainant's exact mark, only with the additional words "sale" and "wholesale" respectively, which do not prevent a finding of confusing similarity.

The Complainant also contends that the Respondents have no rights or legitimate interests in the disputed domain names and confirms that it has not authorized or licensed rights to the Respondents in any respect. The Complainant contends that the disputed domain names forward to websites reproducing the Complainant's website displaying the Complainant's THE FRANKIE SHOP trademark along with its products and photos, except at significantly lower prices which suggest that the goods offered at the disputed domain names could potentially be counterfeits and that such use does not represent rights or legitimate interests in the disputed domain names.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. The Complainant contends that the Respondents should have known of the Complainant and its mark given their fame and that the registration was in bad faith. The Complainant also contends that the disputed domain names redirect to websites that reproduce the Complainant's trademark and product listings exactly except at significantly discounted prices which suggest that the goods offered could potentially be

counterfeits which represent bad faith use and represent use of the disputed domain names with the goal of commercial gain using the fame of the Complainant's mark.

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amendment to the Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names were registered within a short period of time, i.e., <thefrankieshop.sale.shop> on September 14, 2024 and <thefrankieshop.wholesale.shop> on August 19, 2024; the disputed domain names are registered with the same Registrar and hosting provider; the email addresses for the Respondents are composed in the same manner (i.e., [a word followed by a number]@[the same email service provider]), and the disputed domain names redirected to almost identical websites displaying the Complainant's trademark as well as the name of its products and photographs. Therefore, the Panel is of the opinion that the two disputed domain names are subject to common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 names. [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 Panel finds the mark is recognizable within the disputed domain names and accordingly, the disputed domain names are 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, “sale” and “wholesale” – may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel considers that that the composition of the disputed domain names carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. Further, the disputed domain names resolved to almost identical websites prominently displaying the Complainant’s trademark and purportedly offering the Complainant’s goods for sale at heavily discounted prices without any prominent and accurate disclaimer regarding the relationship between the Complainant and Respondent. Those goods appear to be counterfeits of the Complainant’s goods based on the significant price difference. Panels have held that the use of a domain name for illegitimate activity – here, claimed impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the registration of the disputed domain names, which are confusingly similar to the Complainant’s THE FRANKIE SHOP mark, by the Respondent, who is unaffiliated with the Complainant, creates a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Further, the Respondent has used the disputed domain names to purportedly sell the Complainant’s products at heavily discounted prices to Internet users using the Complainant’s product images and names without authorization. Based on such use and the fact that the disputed domain names only consist of the Complainant’s trademark and the terms “sale” and “wholesale”, the Panel finds that by registering and using the disputed domain names, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

Panels have held that the use of a domain name for illegitimate activity – here, claimed impersonation/passing off – constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <thefrankieshopsale.shop> and <thefrankieshopwholesale.shop> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: November 19, 2024