

ADMINISTRATIVE PANEL DECISION

Le Moulin de la Chaume v. Kam Yong
Case No. D2024-4374

1. The Parties

The Complainant is Le Moulin de la Chaume, France, represented by DOMAINOO, France.

The Respondent is Kam Yong, Singapore.

2. The Domain Name and Registrar

The disputed domain name <fournilsdeconstance.com> is registered with Cosmotown, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 24, 2024. On October 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 (The information is not disclosed in the WhoIs) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 28, 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 October 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 18, 2024.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on November 22, 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 French company operating as the industrial bakery of the Agromousquetaires group. The Complainant was founded in 1983 and modernized in 2015. The Complainant is one of the key players in the industrial bakery sector in France, supplying notably Intermarché and Netto.

The Complainant is the owner of the European Union trademark FURNILS DE CONSTANCE, registered on June 10, 2013, under No. 009968926 covering in particular goods and services in classes 30, 35 and 43.

Since 2012, the Complainant has used its trademark FURNILS DE CONSTANCE to market its products. Its products are available in many points of sale, including supermarkets and specialty shops. According to the Complainant, the trademark is widely recognized and used in commerce to designate the Complainant's products, including breads, pastries, and baked goods.

The disputed domain name belonged to the Complainant from February 11, 2011, to February 11, 2024, and was used in connection with the Complainant's activities. According to the Complaint, the Complainant let the disputed domain name expire after February 11, 2024.

The disputed domain name was registered again on August 2, 2024. The disputed domain name resolves to a website that contains pornographic content.

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.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the trademark of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

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 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.

The disputed domain name which is identical to the Complainant's trademark was registered by the Complainant between 2011 and 2024 and was used in connection with the Complainant's activities. This Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's registered trademark. The website to which the disputed domain name resolves contains pornographic content, tarnishing the Complainant's trademark and the Respondent has not shown any rights or legitimate interests in such use associated with the Complainant's trademark.

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 Complainant has provided evidence showing that the disputed domain name belonged to the Complainant from February 11, 2011, to at least February 11, 2024, and was used in connection with the Complainant's activities.
- The Complainant has been using the trademark FOURNILS DE CONSTANCE since at least 2013.
- The Respondent registered the disputed domain name in 2024.

The disputed domain name resolves to a website that contains pornographic content. The use of the disputed domain name for pornographic content in these circumstances is indicative of bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name 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 name <fournilsdeconstance.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: December 6, 2024