

ADMINISTRATIVE PANEL DECISION

Edmund Frette S.à r.l. v. Ozportunity Pty Ltd
Case No. DAU2023-0048

1. The Parties

The Complainant is Edmund Frette S.à r.l., Luxembourg, represented by Barzanò & Zanardo Milano SpA, Italy.

The Respondent is Ozportunity Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <frette.au> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 1, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was November 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2023.

The Center appointed John Swinson as the sole panelist in this matter on November 24, 2023. 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 origins of the Complainant date back to 1860 when Edmond Frette, Alexandre Payre, and Charles Chaboud decided to build a company for the trade of fabrics in Grenoble under the name “Frette, Payre & Chaboud”.

The Complainant sells high quality luxury linens and home furnishings under the FRETTE trademark.

The Complainant owns a portfolio of trademark registrations for FRETTE, including Australian Trade Mark Registration No. 343282 filed and registered from February 26, 1980. That registration includes the endorsement “The English equivalent of the French word ‘FRETTE’ constituting the mark is ‘FRET’”.

The Respondent did not file a Response, so little information is known about the Respondent. ASIC records show that the Respondent was incorporated in 2013, has a registered office in Sydney, and is registered for Goods and Services Tax (“GST”). The Panel was unable to find a website operated by the Respondent.¹

The disputed domain name was registered on September 14, 2022.

The disputed domain name resolves to a Registrar-generated parking page. When reviewed by the Panel as at the date of this decision, this parking page included pay-per-click (PPC) links for bed linen and luxury bed linen.

The domain name <frette.com.au>, which is not the subject of this dispute, resolves to a similar parking page with similar PPC links.

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 the FRETTE trademark is well known throughout the world, does not have an ordinary meaning, and has been included in the disputed domain name in its entirety. Moreover, the disputed domain name resolves to a parking page with PPC links.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, 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 or subsequently used in bad faith.

¹ Pursuant to the Overview of Panel Views on Selected auDRP Questions, Second Edition (“auDRP Overview 2.0”), section 4.8, panels may undertake limited factual research into matters of public record.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns registered trademarks for FRETTE as discussed in section 4 above.

Typically and as is appropriate in this case, it is permissible to disregard respectively the country code Top-Level Domain, ".au", as a functional component of the domain name system.

Accordingly, the disputed domain name is identical to the Complainant's FRETTE trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to the respondent of the subject matter of the dispute, the respondent's *bona fide* use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and the burden of production will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). Based on the materials provided in the Complaint, the Complainant has met this *onus* and has established a *prima facie* case against the Respondent.

There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name. The disputed domain name does not correspond with the Respondent's corporate name.

The disputed domain name resolves to a website hosting PPC links competing with the Complainant and through which the Respondent presumably derives revenue. Use of a domain name to resolve to a parking page, or to generate revenue through PPC links advertising, is generally not considered to be a *bona fide* offering of goods or services such as to give rise to rights or legitimate interests in a domain name. See auDRP Overview 2.0, section 2.9.

The Respondent did not rebut the *prima facie* case against the Respondent.

The Complainant succeeds on the second element of the Policy.

C. Registered or Subsequently Used in Bad Faith

Unlike the Uniform Domain Name Dispute Resolution Policy, the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered or is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The FRETTE trademark is a reference to the name of one of the Complainant's founders. It is not a term that has a natural or dictionary meaning in Australia.

The Panel is aware that the Complainant's products are sold under the FRETTE brand in leading Australian department stores such as David Jones. A Google search of "frette" from Australia returns results that mostly relate to the Complainant.

The disputed domain name is identical to the Complainant's trademark and resolves to a website with PPC links that relate to the Complainant's products. The Complainant owns an Australian Trade Mark Registration for FRETTE.

The Complainant states: "Moreover, FRETTE is a fantasy trademark; thus, it is hard to see how the Respondent could use the disputed domain name in a way that it would not infringe the Complainant's trademark rights." The Panel agrees.

Accordingly, based on the materials before the Panel, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, <frette.au>, be transferred to the Complainant.

/John Swinson

John Swinson

Sole Panelist

Date: December 6, 2023