Decision for dispute CAC-UDRP-100292

Case number	**CAC-UDRP-100292**
Time of filing	**2011-08-03 15:54:47**
Domain names	**fragramcex.com, fragranccex.com**

Case administrator

Name	**Tereza Bartošková (Case admin)**

Complainant

Organization	**FragranceX.com, Inc.**

Complainant representative

Organization	**UDRPro, LLC**

Respondent

Name	**Duan Xiangwang Duan Xiangwang**

OTHER LEGAL PROCEEDINGS

No other legal proceedings concerning the disputed domain names are currently pending.

IDENTIFICATION OF RIGHTS

Complainant owns United States Trademark Registration No. 3,365,121 for FRAGRANCEX.COM, registered on January 8, 2008.

Furthermore, Complainant maintains an extensive Internet presence, including 53 websites incorporating Complainant's mark FRAGRANCEX.COM or variations thereof.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

LANGUAGE OF THE PROCEEDINGS

Complainant kindly requests that the proceedings be conducted in English. Respondent has sufficient ability to communicate in English, as the entire content displayed on the Disputed Domain Names is in English. Furthermore, all of the links on Respondent's websites resolve to English-language websites and the Disputed Domain Names are composed of typographical errors of words in the English language which shows Respondent's capability in the language to intentionally

create such errors.

Respondent has further listed the Disputed Domain Names for sale on an English language website, http://www.sedo.com.

Respondent is a known cyber-squatter and has been involved in other UDRP complaints involving domain names in the English language and where the decisions have been in the English language.

Furthermore, Complainant is based in the United States, and Complainant conducts the all of its business in English. It would therefore be cumbersome and to the Complainant's disadvantage to be forced to translate the entire Complaint to Chinese.

COMPLAINANT'S RIGHTS

Complainant, FragranceX.com, Inc. ("FragranceX") is a global online retailer of perfumes, colognes, fragrances, skincare products, aftershave products, makeup and cosmetic products. Complainant's FRAGRANCEX.COM trademark and brand is extremely well known worldwide, as Complainant ships products to customers in over 240 countries.

Complainant maintains an extensive Internet presence, including 53 websites incorporating Complainant's mark FRAGRANCEX.COM or variations thereof. Complainant registered its domain name <fragrancex.com> on April 13, 2001, and has been continuously using this domain name to promote and sell its products.

Furthermore, Complainant owns United States Trademark Registration No. 3,365,121 for FRAGRANCEX.COM, registered on January 8, 2008.

Complainant registered this mark before Respondent registered the Disputed Domain Names in July 2009.

THE DISPUTED DOMAIN NAMES ARE CONFUSINGLY SIMILAR TO COMPLAINANT'S TRADEMARK

The Disputed Domain Names are common misspelling of Complainant's FRAGRANCEX.COM trademark. Regarding <fragramcex.com>, Respondent has simply replaced the letter "n" between the "a" and "c" in Complainant's trademark with the letter "m". The letters "n" and "m" are situated next to each other on a keyboard, thus making this misspelling of FRAGRANCEX.COM very probable.

Regarding <fragranccex.com>, Respondent has simply added an additional "c" between the "c" and "e" in Complainant's trademark. Again, depressing a letter twice on a keyboard is a very probable error that could be made by Internet users.

These misspellings of Complainant's mark are very probable typographical errors that would be entered by Internet users, and thus, the Disputed Domain Names are confusingly similar to Complainant's mark pursuant to Policy ¶ 4(a)(i).

RESPONDENT DOES NOT HAVE ANY RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAMES

The Disputed Domain Names resolve to parked websites with sponsored click-through links to various third-party websites.

Furthermore, Respondent is using the typographical errors and additions described above in the confusingly similar Disputed Domain Names, thereby capitalizing on a common misspellings of Complainant's mark. This action amount to typo-squatting by the Respondent, which by itself is evidence that Respondent lacks rights and legitimate interests in the disputed domain names under Policy ¶ 4(a)(ii).

Pursuant to Policy ¶ 4(c)(ii), Registrant is not commonly known as FRAGRANCEX.COM, does not operate a business under the name FRAGRANCEX.COM, and does not have a registration for any trademark referring to or related to the term FRAGRANCEX.COM.

THE DISPUTED DOMAIN NAMES HAVE BEEN REGISTERED AND ARE BEING USED IN BAD FAITH

Respondent's use of the Disputed Domain Names to attract Internet users to it's websites and from there to the websites of Complainant's business competitors and other third-party websites disrupts Complainant's business and is therefore evidence of bad faith registration and use of the domain pursuant to Policy ¶ 4(b)(iii).

Further, Respondent's use of the Disputed Domain Names to intentionally attract Internet users for commercial gain is further evidence of bad faith registration and use of the domain names under Policy ¶ 4(b)(iv). Indeed Respondent's domain names create a likelihood of confusion between the domain name and Complainant's mark, and Respondent seeks to capitalize on that confusion by generating click-through fees paid by websites whose links are displayed on Respondent's website. This behavior is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iv).

As previously discussed, Respondent has engaged in typo-squatting through its registration and use of the Disputed Domain Names. This practice has been found by previous panels to constitute evidence of bad faith registration and use under Policy ¶ 4(a)(iii). See Nextel Commc'ns Inc. v. Geer, FA 477183 (Nat. Arb. Forum July 15, 2005) (finding that a respondent's registration and use of the <nextell.com> domain name was in bad faith because the domain name epitomized typo-squatting in its purest form); see also Microsoft Corp. v. Domain Registration Philippines, FA 877979 (Nat. Arb. Forum Feb. 20, 2007) (finding bad faith registration and use of the <microssoft.com> domain name as it merely misspelled a complainant's MICROSOFT mark).

Furthermore, Respondent is a pattern cyber-squatter with a history of registering domain names that infringe upon the trademark rights of others, as a result of which Respondent has been ordered by panels to transfer disputed domain names to various complainants.

On July 8, 2011, Complainant's representative sent Registrant a cease and desist letter requesting transfer of the Disputed Domain Names. See Annex 12. Respondent did not respond to Complainant's letter, and failed to comply with Complainant's demands.

In addition, Respondent intentionally used the FRAGRANCEX.COM marks without consent from Complainant.

Finally, Respondent has listed the Disputed Domain Names for sale at http://www.sedo.com, where potential purchasers can place bids to buy the domains.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In accordance with the authority granted to the Panel under Paragraph 11 of the Rules, the instant decision is issued in English, given that as the Complainant has asserted, the Respondent has sufficient ability to communicate in English, as the entire content displayed on the disputed domain names is in English and there is other objective information from which it can be gathered that the Respondent has a sufficient command of English.

Complainant owns United States Trademark Registration No. 3,365,121 for FRAGRANCEX.COM, registered on January 8, 2008, and is broadly known by this name. Disputed domain names are confusingly similar to FRAGRANCEX.COM trademark, since domain names are common misspelling of Complainant's trademark.

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>"

Respondent's use of the Disputed Domain Names to intentionally attract Internet users for commercial gain is further evidence of bad faith registration and use of the domain names under Policy 4(b)(iv). Indeed Respondent's domain names create a likelihood of confusion between the domain name and Complainant's mark. Furthermore, the panel finds that Respondent's use of the Disputed Domain Names to attract Internet users to it's websites and from there to the websites of Complainant's business competitors and other third-party websites disrupts Complainant's business and is therefore evidence of bad faith registration and use of the domain pursuant to Policy ¶ 4(b)(iii).

As discussed before, Respondent has engaged in typo-squatting through its registration and use of the Disputed Domain Names. This practice has been commonly found by previous panels to constitute evidence of bad faith registration and use under Policy 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FRAGRAMCEX.COM**: Transferred
2. **FRAGRANCCEX.COM**: Transferred

PANELLISTS

Name	**Mr. Luis H. de Larramendi**

DATE OF PANEL DECISION 2011-09-08

Publish the Decision