Decision for dispute CAC-UDRP-101489

Case number	**CAC-UDRP-101489**
Time of filing	**2017-03-30 13:33:06**
Domain names	**istanbul-franke-servis.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Franke Technology and Trademark Ltd**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**RESUL ASKIN**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name

IDENTIFICATION OF RIGHTS

The Complainant owns, inter alia, International Trademark Registration with number 975860 FRANKE, for goods and services in classes 6, 11, 20, 21, 37, which designates several countries all over the world, including Turkey, which trademark was registered on June 14, 2007 and International Trademark Registration with number 872557 FRANKE, for goods in classes 6, 11 and 21, which trademark was registered on February 2, 2005 (the FRANKE Trademark).

FACTUAL BACKGROUND

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

1. As the language of the registration agreement is Vietnamese, the Complainant filed a request that the language of the proceeding should be English based on the fact that (a) the Respondent has not replied to the Complainant's cease and desist letter and reminders, and more particularly has not responded that he did not understand the content of the letter, (b) the Respondent has chosen to register the disputed domain name under the Top Level domain ("TLD") “.com” which is the commercial TLD, and is applicable to a broader audience than merely Turkey and (c) translation of the Complaint would cause unnecessary delay and the Complainant would be unfairly disadvantaged by being forced to translate, as the

translation would raise high costs.

2. The Complainant manufactures kitchen appliances and was established in 1911 in Switzerland, expanded globally in the 80-ies of the last century, and has a wholly owned subsidiary in Turkey. Presently, the Complainant has 70 subsidiaries with around 9,000 employees in 37 countries, generating consolidated sales of CHF 2.1 billion.
3. The Respondent registered the disputed domain name on February 16, 2017 which resolves to a website which apparently offers products under the FRAKE Trademark.

4. The disputed domain name incorporates the FRANKE Trademark coupled with the word Istanbul plus the Turkish word “servis”, which additional terms closely connected to the Complainant's business. According to the Complainant these references exaggerate the impression that Respondent is somehow affiliated with the Complainant, and the Respondent is somehow doing business in Turkey using the FRANKE Trademark.

5. The Complainant has not found that Respondent is commonly known by the disputed domain name. The Complainant further alleges that the Respondent has not by virtue of the content of the website under the disputed domain name, nor by its use of the disputed domain name shown that they will be used in connection with a bona fide offering of goods or services. According to the Complainant the is further no evidence that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services. The FRANKE logotype in red appears prominently on the top left of the website and strongly suggests that there is a connection with Complainant. Moreover, the use of the FRANKE Trademark (i) in the disputed domain name and (ii) also on multiple occasions in the website text further creates the impression that there is some official or authorized link with Complainant in relation to repairs and services within Turkey, especially in the Istanbul area. The Complainant claims that the Respondent does not meet the criteria of Oki Data Americas, Inc. v. ASD, Inc. WIPO Case No. D2001–0903,concerning the use of a trademark as a domain name by an authorized or non-authorized third party.

6.The Complainant further claim that the FRANKE Trademark predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. In light of its the website content, it is clear to the Complainant that the Respondent was aware of the FRANKE Trademark at the time of registration and, therefore, the disputed domain name was registered in bad faith.

7. When the Complainant discovered the existence of the disputed domain name and the website to which it resolves it sent the Respondent a cease and desist letter and two subsequent reminders, which the Respondent all ignored. The Respondent has also never been granted permission to register the disputed domain name and the Respondent takes advantage of the FRANKE Trademark by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s products, services, website or location, for which reason the Complainant alleges that the Respondent uses the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Respondent did not file a Response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 UDRP 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 disputed domain name (within the meaning of paragraph 4(a)(ii)of UDRP Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of UDRP 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

1. Language of the proceedings

Article 11(a) of the Rules provides that “[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The language of the Registration Agreement is Turkish.

The Panel shall use his discretionary authority to decide that the language of the proceedings shall be English for the following reasons:

(a) the Respondent received the Complainant's communications and failed to reply and therefore did not express in any way that he cannot answer the allegations since he does not understand English; and

(b) the Complainant has submitted its Complaint and supporting evidence in English and, therefore, if the Complainant were required to submit all documents in Turkish, the administrative proceeding would be unduly delayed and the Complainant would have to incur substantial expenses for translation.

(cf. Riemann Trading ApS/ Ba Duyen, CAC Case No. 101405);

2. Substantive issues

a. The disputed domain name includes the entire FRANKE Trademark with the addition of “istanbul" and “servis”, which represents the largest city of Turkey and the dictionary word “service”. According to standard case law under the UDRP an addition of a geographical and generic term to a trademark does not take away the similarity between domain name and trademark. The Panel therefore finds that the disputed domain name is confusingly similar to the FRANKE Trademark.

b. The Panel finds the Complainant has established that the Respondent was not licensed or authorized to use the FRANKE Trademark in the disputed domain name. Furthermore, the Panel finds the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. Even if the Respondent would be an unofficial dealer of the Complainant’s products – which the Panel could not establish – the so-called Oki Data would not apply because the Respondent's website does not accurately disclose the Respondent’s relationship with the Complainant and the Respondent’s website does not provide the Respondent’s identity and address. The Panel therefore finds the Respondent has no rights or legitimate interests in respect of the disputed domain name.

c. The Panel is satisfied that the Respondent registered the disputed domain name in bad faith as the disputed domain name incorporates the entire FRANKE Trademark, which trademark is distinctive and used on the website to which the disputed domain name undisputedly resolved as of registration, so that it is likely that the Respondent was familiar with the FRANKE Trademark when he registered the disputed domain name. Further, the Panel is satisfied that the Respondent used the disputed domain name in bad faith as the Respondent chose to ignore the Complainant's cease and desist letter and communications and the Respondent’s use of the disputed domain name takes advantage of the FRANKE Trademark by intentionally attempting to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the FRANKE Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or a service on the Respondent’s website or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ISTANBUL-FRANKE-SERVIS.COM**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2017-04-28

Publish the Decision