

Decision for dispute CAC-UDRP-101670

Case number	CAC-UDRP-101670
Time of filing	2017-09-05 09:14:54
Domain names	FRANKEYETKILISERVISHZMIR.COM

Case administrator

Name	Aneta Jelenová (Case admin)
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Complainant

Organization	Franke Technology and Trademark Ltd
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Complainant representative

Organization	BrandIT GmbH
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Respondent

Organization	Odak Web Tasarim
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various "FRANKE" trademarks, including the international trademark registration no. 872557, registered on February 28, 2005, for numerous goods in international classes 06, 11, and 21 (hereinafter the "trademark"). The Respondent's home country Turkey is one of the countries covered by this international trademark registration.

The disputed domain name was registered on August 19, 2015, i.e. the Complainant's trademark predates the registration of the disputed domain name.

FACTUAL BACKGROUND

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

In 1911 the founder of the Complainant's group of companies ("Franke Group"), Hermann Franke, established a sheet-metal business in Rorschach, Switzerland. In 1974 the Franke Group expanded with 13 subsidiaries and two license companies established in Europe. In 1989 the company expanded worldwide. Today the Franke Group has 70 subsidiaries with around 9,000 employees in 37 countries, generating consolidated sales of CHF 2.1 billion.

Franke Group entered the Turkish market in 1999, and Turkey has become one of its most important markets in the kitchen appliances industry. The Complainant has a presence in Turkey through its wholly owned subsidiaries Franke Mutfak ve Banyo and Sistemleri Sanayi ve Ticaret A.S. The Complainant also operates the local official website <franke.com.tr>.

The disputed domain name incorporates the Complainant's FRANKE trademark coupled with the third most populous Turkish city name "Izmir" plus the Turkish words "yetkili servisi", meaning "authorised service". The Respondent uses the disputed domain name for a website where Respondent advertises repair centre services and claims to be "Franke Izmir Yetkili Servisi", i.e. a "Franke Izmir Authorised Service". The Complainant's FRANKE logo appears prominently on the top left of the website and suggests that there is a connection between the website operator and the Complainant. In fact, however, the Respondent is not an authorized repair centre of the Complainant. The Respondent has never been authorized by the Complainant to register the disputed domain name, or to use the FRANKE logo.

The Respondent's identity was hidden through an identity protection service provider and has only been revealed through the present proceeding under the UDRP Policy.

The Complainant tried to contact the Respondent on July 4, 2017, through a cease and desist letter. A follow up reminder was sent on August 11, 2017. The Complainant's letters were sent to the email address listed in the whois record and to the email address listed on the website itself. No reply was received to either of these emails.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 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 disputed 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 disputed 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.

According to Article 11(a) of the Rules, "unless 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 Complainant, however, has requested that the language of the proceeding be English instead of Turkish.

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

(a) The Respondent's website for which the Respondent has used the disputed domain name features Turkish and a British flag icons, indicating that the website users can choose between Turkish and English language versions of the website.

(b) The Respondent received the Complainant's email communications as well as this complaint under the UDRP Policy in English language and failed to reply. The Respondent did not express in any way that he cannot answer the allegations because of language issues.

(c) The disputed domain name features the gTLD <.com>, which has a global connotation and stands for the English word "commerce". English being the main language of international business, it seems that the disputed domain name was intended to reach not only a Turkish-speaking public, but also an English-speaking one.

(d) The Complainant has submitted its Complaint and supporting evidence in English. 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.

PRINCIPAL REASONS FOR THE DECISION

Apart from the descriptive suffix "yetkili servisi Izmir" (which is Turkish for "authorised service Izmir") the disputed domain name is identical to the Complainant's protected brand name "FRANKE". It is therefore confusingly similar to the Complainant's "FRANKE" trademark (within the meaning of paragraph 4(a)(i) of the Policy).

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain names, nor is the Respondent commonly known under the disputed domain names. This prima facie evidence was not challenged by the Respondent. It is possible that resellers, distributors, or service providers use domain names like the disputed domain names for a bona fide offering of goods and services (within the meaning of paragraph 4(c)(i) of the Policy), and thus have a legitimate interest in such domain names. According to the well-established "Oki Data test" (cf. Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com>; please see section 2.8 of the WIPO Jurisprudential Overview 3.0 for more details), however, the following cumulative requirements must be met in such cases:

- (i) the Respondent must actually be offering the goods or services at issue;
- (ii) the Respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the Respondent must not try to "corner the market" in domain names that reflect the trademark.

The Respondent does not meet requirement (iii) and therefore fails the Oki Data test.

Given the Respondent's prominent use of the FRANKE logo on the website it is evident that the Respondent had the Complainant's trademark in mind when registering the disputed domain name. In the absence of a Response, the Panel infers that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of this website and the Respondent's services offered on it (within the meaning of paragraph 4(b)(iv) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRANKEYETKILISERVISIIZMIR.COM**: Transferred

PANELLISTS

Name	Dr. Thomas Schafft
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DATE OF PANEL DECISION	2017-10-13
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