Decision for dispute CAC-UDRP-101677

Case number	CAC-UDRP-101677
Time of filing	2017-09-11 09:59:45
Domain names	FRANKE-4440275.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Franke Technology and Trademark Ltd

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	SUKRAN MERT

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant in this administrative proceeding, Franke Technology and Trademark Ltd, has entered into Turkish market in 1999 and since then it has been operating actively in the kitchen appliances industry through its Turkish subsidiary Franke Mutfak ve Banyo Sistemleri San.ve Tic. A.Ş in Turkey.

The Complainant has registered the word and figurative trademark "FRANKE" in several classes in many jurisdictions, including in Turkey. The first "FRANKE" trademark in Turkey was registered in 1992 which is before many years from the registration of the Disputed domain name. The Complainant's "FRANKE" trademark is considered as a well-known trademark as proved by the annexes to the Complaint and as accepted within the prior UDRP decisions in relation to the "FRANKE" trademark.

The Complainant has registered domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the trademark "FRANKE", e.g., <franke.com> , <franke.net> and <franke.com.tr>. The registration date of these domain names shows that these were held long before the registration of the Disputed domain name as the first domain name of the Complainant (i.e., <franke.com>), was created on March 18, 1996, according to the

WhoIs records.

FACTUAL BACKGROUND

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

i) LANGUAGE OF PROCEEDINGS REQUEST:

If the language of the Registration Agreement of the disputed Domain name <franke-4440275.com> is a language other than English, according to the applicable Registrar, Complainant hereby files a language of proceeding request that the language of the proceeding should be English based on the following facts:

Respondent has not replied to the cease and desist letter ("C&D letter"), nor responded that they did not understand the content of the letter. This conduct has a relevancy when deciding on the language of the proceeding, as it was stated on WIPO Case no. D2015-0298 where the "The Respondent did not reply to the Complainant's request, therefore it did not express in any way that it cannot answer the allegations since it does not understand English."

The Disputed domain name includes the Complainant's mark FRANKE. Complainant is a Swiss company whose business language is English and considering that Respondent is in the service business, it is unlikely that Respondent is not at least familiar with the English language. In addition, Respondent has chosen to register the domain name under the Top Level domain name ".com" which is the commercial TLD, and is applicable to a broader audience than merely Turkey. A more suitable TLD if only addressing the Turkish market would be the ".com.tr" extension. Complainant contends the proceeding would likely be put through unnecessary trouble and delay if Turkish were made the language of the proceeding and there would be no discernible benefit to the parties or the proceeding, in the circumstances, that may be gained by maintaining the default language. In WIPO decisions D2015-1508 and D2015-0614 the Panel decided to accept the Complaint to be filed in English despite the fact that the Registrar had informed the Center that the language of the Registration Agreement was Turkish.

ii) ABOUT COMPLAINANT AND THE BRAND FRANKE

The Complainant is the proprietor of the FRANKE trademarks. Franke entered the Turkish market as early as in 1999 and Turkey has become one of its most important markets in the kitchen appliances industry. Complainant has presence in Turkey through its wholly owned subsidiaries Franke Mutfak ve Banyo and Sistemleri Sanayi ve Ticaret A.S. Complainant also operates the local official website www.franke.com.tr.

In 1911 Hermann Franke established a sheet-metal business in Rorschach, Switzerland. In 1974 the Franke Group expanded significantly with 13 subsidiaries and two license companies established in Europe. In 1989 the company expanded worldwide. Today the Franke Group (included in the Artemis Group) has 70 subsidiaries with around 9'000 employees in 37 countries, generating consolidated sales of CHF 2.1 billion.
The Franke Group consists of four businesses:
• Franke Kitchen Systems – integrated systems for food preparation and cooking, including sinks, taps, worktops, hoods and cooking appliances
• Franke Foodservice Systems – kitchen equipment, supplies and a broad range of services for leading restaurant chains
• Franke Water Systems – integrated systems for private bathrooms and semi-/public washrooms, including taps, showers, sinks, accessories, water management systems
• Franke Coffee Systems – a comprehensive range of coffee machines for out of home coffee preparation, including superautomatics, traditionals and brewers.
Complainant is the owner of the well-known registered trademark FRANKE as a word and figure mark in several classes in numerous countries all over the world including Turkey. Complainant has a strong presence in Turkey where Respondent resides. The Complainants official sales and service locator and website in Turkey are:

• www.franke.com
• www.franke.com

Overview of trademark registrations:
IR = International Registration (NB: Turkey falls within the Madrid Protocol)

Trademark
Reg. No
Class:
Date of Registration

FRANKE
IR 975860
6; 11; 20; 21; 37
June 14, 2007 (ink. Turkey)

FRANKE
IR 872557
6; 11; 21;
February 28, 2005 (ink. Turkey)

FRANKE Turkish national no. 135579
6-7,9,11,19, 20-21
September 23, 1992

Complainant owns the Turkish national trademark via its subsidiary, Franke Water Systems AG.

These trademark registrations predate the registration of the Disputed domain name. Due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown around the world, including in Turkey where Respondent is located. Complainant has previously successfully challenged several FRANKE domain names through UDRP processes e.g. WIPO cases: D2016-1120; DCO2016-0021; D2016-0686; D2016-0663.

Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “franke”, for example, <franke.com> (created on March 18, 1996), <franke.com.tr> (created on April 27, 2000), and <franke.net> (created on October 1, 1997). Complainant uses these domain names to connect to a website through which it informs potential customers about its FRANKE mark and its products and services.

LEGAL GROUNDS:

i) THE DOMAIN NAME IS CONFUSINGLY SIMILAR

The domain name <franke-4440275.com> (hereinafter referred to as the “Disputed domain name”), registered on May 11, 2017, directly and entirely incorporates Complainant’s well-known, registered trademark FRANKE. The addition of the generic Top-Level Domains (gTLD) “.com” does not add any distinctiveness to the Disputed domain name. The Disputed domain name incorporates the FRANKE trademark coupled with what appears to be a phone number “4440275”. The name Franke with the addition of a phone number would be closely connected to Franke´s business and exaggerates the impression that Respondent is somehow affiliated with Complainant, and Respondent is somehow doing business in Turkey using Complainant`s trademark. E.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), paragraph 1.8, as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following “In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test”. This reasoning should apply here and the Disputed domain name should be considered as confusingly similar to the registered trademark FRANKE.

ii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAMES

Complainant has not found that Respondent is commonly known by the Disputed domain name. The WHOIS information "Sukran Mert" is the only evidence in the WHOIS record, which relates Respondent to the Disputed domain name.
Respondent has not by virtue of the content of the website, 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.
There is no evidence that 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. It is clear that Complainant has become a distinctive identifier associated with the term "FRANKE" and that the intention of the Disputed domain name is to take advantage of an association with the Complainant's business.

THE WEBSITE

Respondent is using the above Disputed domain name to attract internet users to its website where Respondent state that they are "Franke Servisi" (in English by Google Translator: "Franke Service"). A common misunderstanding with authorized or non-authorized repair centers is that they also believe that they can freely register domain names incorporating the trademark name of the products they are offering services on. In the current case, Respondent is not an authorized repair center. The FRANKE logotype in red appear with major prominence towards the bottom half of the home page, and also on the left hand side next to the phone number. This strongly suggests that there is a connection with Complainant. Moreover, the use of the word FRANKE (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. The trademark FRANKE has been already considered by previous WIPO cases as a well-known trademark and it is inconceivable, noting the prominent use of the logo on the website, that Respondent didn't know about its existence. E.g. WIPO case number D2016-0686 Franke Technology and Trademark Ltd vs NicProxy Customer Whois Privacy Protection Service where the Panel stated the following:

"First, the Panel believes that the Respondent must have been well aware of the Complainant's trademarks when it registered the disputed domain name on September 24, 2013. At the date of registration of the disputed domain name, the Complainant's FRANKE trademark was already well-known worldwide, including in Turkey, for many years".

In addition, the website invites visitors to contact Respondent via the telephone number 444 0 275. See WIPO Case No. D2015-1024 Steven Madden, Ltd. v. Daniel Monroy where Respondent collected personal information from Internet users visiting the website (name, phone number, email address, age et cetera) who filled out a form, where the Panel noted that: "users presumably would not provide such data unless they believe they are dealing with Complainant or with a representative of Complainant… since personal data are a valuable commodity, eliciting such data as described is not a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers, pursuant to Policy paragraph 4(c)(iii)". This finding should also apply here declaring that Respondent's attempt to "phish" for users' personal information is neither a bona fide offering of goods and services nor a legitimate noncommercial or fair use pursuant to Policy.

Following Oki Data Americas, Inc. v. ASD, Inc. WIPO Case No. D2001–0903, the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

(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.

As mentioned previously, the Respondent fails all of these tests, namely:

• Firstly, Respondent is not selling the Complainant's products or services through the Disputed domain name, but rather appears to be offering an appliance repair and maintenance service;
• Secondly, Respondent does not accurately and prominently disclose the relationship with Complainant on the challenged pages. On the website connected to Disputed domain name the use of the Franke logotype prominently on the top left hand corner creates the immediate and pervasive impressions that the website is the official site of Complainant. There is only a small statement of sorts, at the bottom of the page in pale type which is difficult to read. The disclaimer merely states "© Franke Beyaz Eşya Tamir Servisi Sitede bulunan logo ve resimler ilgili firmanın tescilli markasıdır" which means, according to Google Translate, "© Franke White Goods Repair Service The logo and pictures on the site are registered trademarks of the respective company." Clearly this does not disclose the non-existent relationship between Respondent and Complainant, but rather reinforces the impression that Respondent is somehow related to or authorized by Complainant, which is not the case.
• On the other hand, the use of the logo and Word mark FRANKE proves that Respondent had prior knowledge of the Complainant's trademark and tried to take advantage of an association with the business of Complainant;
• Further, Respondent is depriving the Complainant of reflecting its own mark in the Domain Name; and,
• Finally, Respondent presents themselves as the trademark owner by using Complainant`s official FRANKE trademark (word trademark in color).

Respondent's use of the Disputed domain name creates an overall impression that they are the Complainant. In the present case, Respondent does meet all the Oki Data criteria. It is undeniable that Respondent was aware of Complainant's marks prior to the acquisition of the Disputed domain name and the establishment of Respondent's website. Respondent has made no claims to either having any relevant prior rights of its own, or to having become commonly known by the Disputed domain name. Clearly, Respondent is not known by the Disputed domain name, nor does Respondent claim to have made legitimate, non-commercial use of the Disputed domain name.
Respondent has been granted several opportunities to present some compelling arguments that it has rights in the Disputed domain name but has failed to do so. This behavior coupled with the use of the Disputed domain name cannot be considered as legitimate use of the Disputed domain name.

iii) THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

It has to be highlighted that Complainant's trademarks predate the registration of the Disputed domain name and Respondent has never been authorized by Complainant to register the Disputed domain name. In light of the website content, it is clear that the Respondent was aware of the Complainant's trade mark at the time of registration and, therefore, the Disputed domain name was registered in bad faith.

THE DOMAIN NAME IS BEING USED IN BAD FAITH

Complainant tried to contact Respondent on July 03, 2017 through a cease and desist letter. A follow up and final reminder were sent respectively on July 14 and 20, 2017. The letter was sent to the email address listed in the whois record and to the email address listed on the website associated with the Disputed domain name. In the cease and desist letter, Complainant advised Respondent that the unauthorized use of its trademarks within the Disputed domain name violated their trademark rights and Complainant requested a voluntary transfer of the Disputed domain name. However, no reply was received. Respondent has simply disregarded such communications. Since the efforts of trying to solve the matter amicably were unsuccessful, Complainant chose to file a complaint according to the UDRP process. It has been mentioned in earlier cases that the failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith, e.g., News Group Newspapers Limited and News Network Limited v. Momm Amed Ia, WIPO Case No. D2000-1623; Nike, Inc. v. Azumano Travel, WIPO Case No. D2000-1598; and America Online, Inc. v. Antonio R. Diaz, WIPO Case No. D2000-1460.

THE WEBSITE

In the WIPO case no. D2014-1010 M. & B. Marchi e Brevetti Srl - Limited Liability Company v. A Gurbulak As / Webbilisimhizmetleri / Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Zafer Gurbulak concerning among others the domain names <ankaraaristonservisi.net>, <ankaraaristonservisleri.com>, <ankaraaristonservisleri.net> where similar circumstances to the current case were established, the Panel noted that:

“The Respondent's active websites associated with the disputed domain names appear to offer repair services for Ariston branded products. Therefore, the Respondent was aware of the Complainant's trademark ARISTON at the time the disputed domain names were registered.”

“The fact that the Respondent’s active website uses the Complainant’s trademark ARISTON multiple times in bold letters and states that the Respondent provides original spare parts with “ARISTON Service Assurance” suggests that the respondent is affiliated with the Complainant when it is actually not the case. The Panel has noted the presence of a small disclaimer on the active website but finds it insufficient in the circumstances, especially given that it is very general and does not make specific reference to the Complainant. In the circumstances, and as indicated before, the Panel considers that the use made of the active websites associated with the disputed domain names does not qualify as a bona fide offering of goods or services under the Policy.”

The same circumstances apply in this case. Further, Respondent has never been granted permission to register the Disputed domain name. 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.

From the Complainant’s point of view, Respondent intentionally chose the Disputed domain name based on the registered and well-known trademark in order to generate more traffic to its own business. Nowhere does Respondent disclaim an association between itself and Complainant. The Disputed domain name is currently connected to a service center website, consequently, Respondent is using the Disputed domain name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant’s trademarks as to the source, sponsorship, affiliation or endorsement of its website. This conduct has been considered as bad faith under the Policy, and other WIPO decisions have also arrived to the same conclusion, for example Philip Morris Incorporated v. Alex Tsypkin, WIPO Case No. D2002-0946, where the Panel stated:

“It follows from what has been said about legitimacy that the Panel is satisfied that Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of his web site. Pursuant to Policy paragraph 4(b)(iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii).

In the WIPO case no. D2015-0579 AB Electrolux v. Guangzhou Nan Guang Electrical Appliances Co.Ltd. concerning the domain name zanussi-china.com with similar circumstances as the current case, the Panel noted that:

“The Respondent is using the Domain Name for a website with an orange and black livery, which displays the mark ZANUSSI in a large, black font in the banner and photographs of the Complainant's group's ZANUSSI products... The Panel accepts the Complainant's evidence that the Respondent's website is liable to mislead customers into believing that it is a website of the Complainant or authorized by it. This evidence is well-substantiated by the nature of the Domain Name, the absence of any statement that the Respondent is not authorized by the Complainant's group, the prominent ZANUSSI mark in the banner, the orange and black livery, and the pictures of the Complainant's group's products. Furthermore, having regard to all the circumstances, the Panel considers that it was the Respondent's intention so to mislead customers.”

Similarly, in the WIPO case no D2014-0487 Aktiebolaget Electrolux v. electroluxmedellin.com, Domain Discreet Privacy Service / Luis Rincon where analogous circumstances were at hand the Panel stated:

“The continuing use of the disputed domain name is clearly confusing to online users who will be attracted by the inclusion

of the word ELECTROLX in the disputed domain name, and who will therefore believe that they are accessing a website that is in some way associated with or authorized by the Complainant. This is not the case, and the consumer confusion is further strengthened by the fact that there are services for Electrolux products advertised on the Respondent's website without any disclaimer of association with the Respondent."

PATTERN OF CONDUCT

A pattern of conduct can involve multiple UDRP cases with similar fact situations or a single case where the respondent has registered multiple domain names, which are similar to trademarks. Here, it has to be highlighted that the Respondent using its official name "Sukran Mert", as indicated in WHOIS Lookup record, has registered 47 domain names including well-known brands such as BOSCH, MIELE and SIEMENS with the domain names. Such pattern of abusive registrations does not constitute bona fide use of the Disputed domain name and it is clear that Respondent is not in compliance with the Oki-Data rules and therefore, Respondent is capitalizing on well-known trademarks.

In the recent CAC Case No 101539, Franke Technology & Trademark vs hakan gUlsoy concerning the domain name franke-servisi.com, with similar facts involved the Panel stated:

"Moreover, the Complainant points to a pattern of conduct by Respondent wherein Respondent registered 39 domain names including well-known brands such as "BOSCH" and "SIEMENS". A pattern of conduct expressly forbidden by paragraph 4(b)(ii) of the Policy. It is found that the Respondent has pattern of conduct that includes regularly registering as domain names trademark holders' trademarks. This pattern of conduct clearly demonstrates bad faith on the part of the Respondent."

The Respondent takes advantage of the FRANKE trademark by intentionally attempting to attract visitors to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or a product or service on the Respondent's website or location.

To summarize, FRANKE is a well-known trademark in the kitchen appliances industry including Turkey where the website associated with the Disputed domain name is operating as "Franke Service". It is highly unlikely that Respondent was not aware of the rights Complainant has in the trademark and the value of said trademark, at the point of the registration. Inference of bad faith registration and use of the Disputed domain name is also given by the fact that Respondent never replied to Complainant's cease and desist letter. It is reasonable to assume that if Respondent did have legitimate purposes in registering and using the Disputed domain name it would have responded. In addition, Respondent does not meet the Oki Data principles on all elements: lack of a distinctive disclaimer; Respondent can be regarded to corner the market preventing Complainant from operating the Disputed domain name; and they represent themselves as the trademark owner by displaying Complainant's logo on the website. Finally, Respondent shows a pattern of abusive conduct by owning several domain names related to third party brands. Consequently, Respondent should be considered to have registered and to be using the Disputed domain name in bad faith.

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.

A. Language of the decision:

The Disputed domain name's Registration Agreement is implied to be in Turkish in the Compaint. The Panel was not able to confirm this information from the Complaint petition. In any case, pursuant to the Rules, paragraph 11, 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. However, the Complainant submitted arguments along with the Complaint as to why the proceeding should proceed in English. The purpose of paragraph 11 of the Rules is to ensure fairness in the selection of language by giving full consideration to the parties' level of comfort with each language, the expenses to be incurred and the possibility of delay in the proceeding in the event translations are required and other relevant factors.

The Respondent did not reply to the Complainant's request, therefore it did not express in any way that it cannot answer the allegations since it does not understand English.The Complainant has submitted its Complaint in English and supporting evidence in both in English and Turkish. Moreover, the Complainant is not a Turkish entity. 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. The Respondent has not objected to the Complainant's language request and has not come forward to express any interest in this proceeding. Therefore, in consideration of the above circumstances and in the interest of fairness to both Parties, the Panel hereby decides, under paragraph 11(a) of the Rules, that English shall be the language of administrative proceeding in this case.At this point, the Panel refers to Groupe Industriel Marcel Dassault, Dassault Aviation v. Mr. Minwoo Park, WIPO Case No. D2003-0989; Deutsche Messe AG v. Kim Hyungho, WIPO Case No. D2003-0679; and Zappos.com, Inc. v. Zufu aka Huahaotrade, WIPO Case No. D2008-1191. The Panel finds that in the circumstances of this case, paragraph 11 of the Rules is best served by allowing this proceeding to be conducted in English.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
B. The Respondent has no rights or legitimate interests in respect of the domain name; and
C. The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Policy simply requires the Complainant to demonstrate that the Disputed domain name <FRANKE-4440275.COM> is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the

Complainant is the owner of registrations of the trademarks "FRANKE" in Turkey.

The Panel further finds that the Disputed domain name is confusingly similar to the Complainant's "FRANKE" trademark. The Disputed domain name incorporates the Complainant's FRANKE trademark in its entirety with the addition of a phone number. The Panel concludes that the addition of the phone number does not eliminate the confusing similarity between the Complainant's trademark "FRANKE" and the Disputed domain name.

In similar UDRP cases (see, e.g., Sanofi-Aventis v. Gideon Kimbrell, WIPO Case No. D2010-1559; Turkcell Iletisim Hizmetleri A.S. v. Vural Kavak, WIPO Case No. D2010-0010; Greenbrier IA, Inc. v. Moniker Privacy Services/Jim Lyons, WIPO Case No. D2010-0017 and Zodiac Marine & Pool, Avon Inflatables Ltd and Zodiac of North America Inc. v. Mr. Tim Green, WIPO Case No. D2010-0024), the respective UDRP panels found that adding descriptive words does not remove the likelihood of confusion between a trademark and a domain name incorporating said trademark.

Moreover, the Panel finds that the addition of the ".com" suffix is irrelevant when determining whether the Disputed domain name is confusingly similar to the Complainant's trademark.

The Panel is of the opinion that the internet users will fall into false impression that the Disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the Disputed domain name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. No Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [the Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [the Respondent] are 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.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the Disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the Disputed domain name.

The Panel is of the opinion that, without express authority of the relevant trademark holder, to be an authorized technical service of that trademark holder's products would not create any right to use a domain name that is identical, or otherwise wholly incorporates the relevant trademarks. In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent is not an authorized business partner and therefore has no authorization to use the "FRANKE" trademark in the Disputed domain name.

The Panel also accepts that the Respondent is not commonly known by the Disputed domain name, the Respondent has acquired no trademark or service mark rights, and the Respondent is not an authorized dealer or representative of the Complainant.

Moreover, as the Complainant points out, the Respondent would not meet the criteria laid down in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, and therefore shall not be considered as acting with goodwill. This is based on the fact that the web site does not accurately disclose the Respondent's relationship with the trademark owner as there is no clear explanation or disclaimer and the trademark of the Complainant is used on the top left corner of each page.

In light of the evidence provided by the Complainant, notably that the Complainant has not granted the Respondent any right or license to use the FRANKE trademarks, the Panel finds that the Complainant has established a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name for the purposes of the Policy.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the Disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant must prove both that the Disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

By consideration of the foregoing, the Panel is of the opinion that due to the earlier rights of the Complainant in the trademark FRANKE, the Respondent, also being located in Turkey, was aware of the Complainant and its FRANKE trademark at the time of the registration of the Disputed domain name. See, e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107; General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No. D2001-0087; Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226. The Panel believes that the awareness of the Complainant's trademark at the time of the registration of the Disputed domain name is to be considered an inference of registration in bad faith.

Further, the fact that the Respondent's website uses the Complainant's trademark "FRANKE" in connection with an offering of services related to the Complainant's goods suggests that by using the Disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Considering that the disputed domain name includes a phone number which directs the visitors to the Respondent’s repair and maintenance services of the Complainant’s business, the addition of the phone number to the Disputed domain name is not of distinguishing effect.

The addition of the phone number for the call center tends to reinforce consumers' conclusion that the website to which the Disputed domain name resolves is somehow legitimately included in the supply and service system established by the Complainant under its "FRANKE" trademarks, or otherwise strengthens the risk of association with the Complainant's mark. Moreover, the Complainant points to a pattern of conduct by Respondent wherein Respondent registered 47 domain names including well-known brands such as "BOSCH" “MIELE” and "SIEMENS". A pattern of conduct expressly forbidden by paragraph 4(b)(ii) of the Policy. It is found that the Respondent has pattern of conduct that includes regularly registering as domain names trademark holders' trademarks. This pattern of conduct clearly demonstrates bad faith on the part of the Respondent.

Furthermore, by not submitting any response, the Respondent has failed to invoke any circumstances that could demonstrate that it did not register and use the Disputed domain name in bad faith.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the Disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRANKE-4440275.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2017-10-24

Publish the Decision