Decision for dispute CAC-UDRP-101672

Case number	CAC-UDRP-101672
Time of filing	2017-09-06 00:00:00
Domain names	ANTALYAFRANKESERVISI.COM

Case administrator

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

Complainant

Organization	Franke Technology and Trademark Ltd

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	WHOISSHELTER.COM

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, among which the international trademark registration no. 872557, registered on February 28, 2005, for numerous goods in international classes 06, 11, and 21 (hereinafter the “trademark“). Turkey where the Respondent is supposed to be established is one of the countries covered by this international trademark registration.

The disputed domain name was registered on January 26, 2017, i.e. all the Complainant’s trademarks predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

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. The Complainant has 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 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 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. The Complainant has a strong presence in Turkey where the Respondent resides. The Complainants official sales and service locator and website in Turkey is www.franke.com.

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

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

The 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). The 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.

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 Complainant 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 e-mail communications, cease & desist letter 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 geographic prefix "Antalya" and the descriptive suffix “servisi” (which means "service" in Turkish) 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 name. This prima facie evidence was not challenged by the Respondent.

While it may be possible that resellers, distributors, or service providers use domain names like the disputed domain name 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 name, according to the well-established “Oki Data test” (cf. Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com> (see section 2.8 of the WIPO Jurisprudential Overview 3.0 for more details), 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 highly likely 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 disputed 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. **ANTALYAFRANKESERVISI.COM**: Transferred

PANELLISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2017-11-07

Publish the Decision