Decision for dispute CAC-UDRP-101839

Case number	CAC-UDRP-101839
Time of filing	2018-01-10 09:31:23
Domain names	FrankeServis.info

Case administrator

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

Complainant

Organization	Franke Technology and Trademark Ltd

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	Caner TANAOBA / Caner TANAOBA

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant relies on three registered trademarks for FRANKE and has adduced evidence which the Panel accepts verifying those registrations. The three trademarks are:

1. TM: FRANKE
WIPO Reg. No: IR 975860
Class: 6; 11; 20; 21; 37
Date of registration: June 14, 2007 (inc. Turkey)

2. TM: FRANKE
WIPO Reg. No: IR 872557
Class: 6; 11; 21;
Date of registration: February 28, 2005 (inc. Turkey)

3.TM: FRANKE
Turkey Reg. No: Turkish national no. 135579

Class: 6-7,9,11,19, 20-21
Date of registration: September 23, 1992

The foregoing trademarks will be referred to collectively in this decision as "the FRANKE trademark."

Evidence has been adduced by the Complainant which the Panel accepts that the first and second of the foregoing registrations are registered in the name of the Complainant and that the third of the registrations is registered in the name of a Turkish subsidiary of the Complainant, namely Franke Water Systems AG. The Panel therefore finds that the Complainant has rights in each of the trademarks.

FACTUAL BACKGROUND

The Complainant is a Swiss company engaged in the business of manufacturing and distributing kitchen appliances. The business has been conducted since 1911 and it now operates globally, including at the website www.franke.com. The Complainant 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 a local official website in Turkey at www.franke.com.tr. The worldwide group operates in 37 countries and it is substantial and successful.

The principal trademark under which the Complainant operates is FRANKE, which is registered extensively throughout the world, including in Turkey, where the Complainant has a subsidiary business and where the Respondent appears to be domiciled.

The Complainant has also registered and used a large number of domain names which include the word "franke" which are also used in its business.

The Complainant has been concerned that the Respondent has registered the Disputed Domain Name which it did on November 16, 2017. The evidence from the Registrar verification is that the registrant of the Disputed Domain Name is the Respondent. The Respondent has used the Disputed Domain Name for an active website which purports to offer repairs and service within Turkey of various brands of products including the Complainant's products, which it does by extensive use of the Complainant's FRANKE trademark on the website. In fact, the Respondent is not an authorised service provider for the Complainant's products.

To stop this conduct the Complainant had a cease and desist letter sent to it, but the letter has been ignored by the Respondent.

As a last resort, the Complainant has therefore instituted this proceeding in which it requests that the Disputed Domain Name be transferred to it.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

i) THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE FRANKE TRADEMARK

The domain name <frankeservis.info> (hereinafter referred to as the “ Disputed Domain Name”), registered on November 16, 2017, directly and entirely incorporates Complainant’s well-known, registered trademark FRANKE.

It also incorporates a form of the Turkish word “servisi”, meaning “service”, which emphasises the impression that the

Respondent is affiliated with Complainant, and that the Respondent is somehow authorised to do business in Turkey using Complainant`s trademark, which it is not.

The inclusion of the FRANKE trademark and the word "servis" in the Disputed Domain Name necessarily imply that it may well be an official domain name of the Complainant, based on the FRANKE trademark, thus making it confusingly similar to the trademark.

That submission is well supported by previous UDRP decisions.

Moreover, the addition of the top-level suffix ".info" in the disputed domain name should be disregarded under the confusing similarity test as it does not add any distinctiveness to the Disputed Domain Name.

Accordingly, the Disputed Domain Name is confusingly similar to the registered trademark FRANKE in which the Complainant has rights.

ii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant has not found that Respondent is commonly known by the Disputed Domain Name. The WHOIS information noting that “Caner TANAOBA" is the registrant of the domain name is evidence that Respondent is known by that name and thus is not commonly known by the Disputed Domain Name.

Respondent has not by virtue of the content of the website, nor by its use of the domain name shown that the domain name 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 sought to make itself a distinctive identifier associated with the term FRANKE and that the intention of the Respondent is to take advantage of an apparent association between the Disputed Domain Name and the Complainant and its business.

This can be seen by an examination of the website to which the Disputed Domain Name resolves. Respondent is using the Disputed Domain Name to attract internet users to its website where Respondent states that it is “Franke Servisi Teknik Servis”, which, translated by the Google Translator mean Franke Service Technical Service. In other words, the Respondent is claiming on its website that it can offer technical servicing for Franke products, which it is not authorized to do.

A common misunderstanding with authorized or non-authorized repair centers is that they believe that they can freely register domain names incorporating the trademark name of the products for which they are offering services. In the present case, the Respondent is not an authorized repair center and had no authority to offer such services.

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 which there is not.

The trademark FRANKE has already been considered by previous UDRP cases as a well-known trademark and it is inconceivable that Respondent did not know of its existence. The Complainant therefore relies on the decision in Franke Technology and Trademark Ltd v. NicProxy Customer Whois Privacy Protection Service, WIPO Case D20216-0686 to that effect. In addition, the website invites visitors to contact Respondent via the telephone number 444 36 89. These matters show the Respondent had embarked on a phishing expedition to obtain valuable personal information. It is therefore submitted and it is consistent with prior decisions, that Respondent’s attempt to phish for users’ personal information is neither a bona fide offering of goods and services nor a legitimate non-commercial or fair use pursuant to Policy.

The facts of the present case are such that the Respondent could not rely on the principles set out in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001–0903, to show that it had a right or legitimate interest in the domain name, even if it had filed a Response. That is so because 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. Also, Respondent does not accurately and prominently disclose its relationship with Complainant. Rather, the use of the Franke logotype prominently on the top left hand corner of the website creates the immediate and pervasive impression that the website is the official site of Complainant. There is only a small disclaimer of sorts, at the bottom of the page in pale type which is difficult to read; the disclaimed is ineffective and reinforces the impression that Respondent is somehow related to or authorized by Complainant, which is not the case.

Moreover, the use of the word mark FRANKE in red proves that the Respondent had prior knowledge of the Complainant's trademark and tried to take advantage of an association with the business of the Complainant.

The Respondent is also depriving the Complainant of the ability to reflect its own mark in the Disputed Domain Name, and Respondent presents itself as the trademark owner by using Complainant`s official FRANKE trademark.

The Respondent's use of the Disputed Domain Name creates an overall impression that it is the Complainant. Respondent must have been aware of Complainant's marks prior to the registration of the Disputed Domain Name and the establishment of Respondent's website. The 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, the Respondent is not known by the Disputed Domain Name, nor does the Respondent claim to have made legitimate, non-commercial use of the Disputed Domain Name.

The 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.

On all the facts, it is clear that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

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

THE DISPUTED DOMAIN NAMES WAS REGISTERED IN BAD FAITH

The Complainant's trademark predates the registration of the Domain Name and the 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.

Moreover, the identity of the Respondent was hidden before filing this complaint through an identity protection service which is evidence of bad faith registration.

THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

Complainant tried to contact Respondent on December 4, 2017 through a cease and desist letter. A follow up and final reminders were sent respectively on December 11 & 18, 2017. The letter was sent to the e-mail address listed in the whois record and to the e-mail 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.

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 decisions that the failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, is relevant to a finding of bad faith.

Moreover, the 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 a 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 the Complainant.

The Disputed Domain Name is currently connected to a service center website and, 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 in previous UDRP cases as bad faith under the Policy.

The Respondent is clearly taking 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.

The Respondent has also engaged in a pattern of conduct of abusive registration of domain names which shows the Respondent's conduct does not constitute a bona fide use of the Disputed Domain Name and the Respondent is capitalizing on the well-known trademarks of others, which is indicative of bad faith.

To summarize, FRANKE is a well-known trademark in the kitchen appliances industry including in Turkey where the website associated with the Disputed Domain Name is operating as Franke Service. It is highly unlikely that Respondent was not aware at the time of the registration of the Disputed Domain Name that the Complainant had rights in the trademark and the value of the trademark.

Inference of bad faith registration and use of the Disputed Domain Name is also given by the fact that Respondent did not reply 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.

Consequently, Respondent should be considered to have registered and to be using the Disputed Domain Name in bad faith.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and is in default.

The Panel notes the observations in the recent decision in similar circumstances in Case No 100053, Enterprise Rent-a-Car Company v. Blupea c/o Janepanas, Sirinarin and will therefore decide this proceeding on the basis of the Complainant's submissions, drawing such inferences from the Respondent's default that are considered appropriate according to paragraph 14(b) of the Rules. It is also noted in that decision that it was said in Enterprise Rent-A-Car Company v. Marco Costa, NAF case No. 908572, that "the Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory". The Panel will therefore proceed along those lines.

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.

PRINCIPAL REASONS FOR THE DECISION

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

PRELIMINARY ISSUE- LANGUAGE OF PROCEEDINGS:

The Complainant submits that if the language of the Registration Agreement of the disputed Domain Name <frankeservis.info> is a language other than English, according to the applicable Registrar(s), the Complainant makes a request that the language of the proceeding should be English. The evidence coming from the Registrar verification shows that the language of the registration agreement is Turkish. The Panel therefore proceeds on the assumption that the Complainant requests that the language of the proceeding should be English. The Complainant's request is based on the following submissions.

The Complainant submits that the Respondent has not replied to the cease and desist letter ("C&D letter"), nor responded that it 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 Complainant also submits that 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, the Complainant submits that Respondent has chosen to register the domain name under the Top Level domain ".info" 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. The proceeding will 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.

The Panel agrees with the Complainant's submissions and in the exercise of its discretion finds that the language of the proceeding will be English.

ADMINISTRATIVE DEFICIENCY

By notification dated January 11, 2018 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not sufficiently identify the Respondent and directed attention to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder.

On January 15, 2018 the Complainant filed an Amended Complaint and the CAC determined that in view of the amendments

so made, the Complaint should be forwarded to the Respondent.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

SUBSTANTIVE MATTERS

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 onus 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.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
(ii) The respondent has no rights or legitimate interests in respect of the domain name; and
(iii) 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 Panel finds that the Disputed Domain Name is confusingly similar to the FRANKE trademark. That is so for the following reasons.

First, the Disputed Domain Name consists of the entirety of the FRANKE trademark to which the Respondent has added the word "servis", which can only be taken to mean service facilities provided by the owner of the FRANKE mark for the products it makes and sells. In this regard it has long been held by UDRP panels, as the Complainant submits, that the mere addition of a generic word such as "servis" to a trademark does not eliminate confusing similarity that is otherwise present, as it is in the present case.

That principle has long been supported in UDRP decisions and the Panel will apply it in the present case. It clearly applies to the present case because internet users would naturally believe that the domain name is linked to the Complainant because its name and trademark are in the domain name and also because the word 'servis' implies that the Complainant is using the domain name and the website to which it resolves to offer servicing facilities for the products it sells under the FRANKE trademark.

In addition, it is now well established that the TLD ".info" in the Disputed Domain Name, like other TLDs, should be disregarded for the purposes of the comparison with the trademark.

The Complainant has also adduced evidence that the Panel accepts that it is the registered owner of the registered trademarks more particularly described above and hence that it is the owner of the FRANKE trademark and that as such it has rights in that trademark.

Accordingly, the Disputed Domain Name is confusingly similar to the Complainant’s FRANKE trademark and the Complainant has thus shown the first of the three elements that it must establish.

B. 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.

But by virtue of paragraph 4(c) of the Policy, 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 a respondent of the dispute, its 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) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
(iii) respondent is making a legitimate noncommercial 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 a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. That prima facie case is made out from the following considerations.

First, the Respondent chose for the disputed domain name, without the Complainant’s authorization, the Complainant’s well-known FRANKE trademark which it has had registered since 1992 in Turkey, where the Respondent is apparently domiciled and used as its business name for many years, including in Turkey, as a leading international manufacturer and distributor of kitchen appliances.

Secondly, the Complainant has submitted that it has not found that the Respondent is commonly known by the Disputed Domain Name and that the WHOIS information shows that Caner TANAOBA is the registrant of the Disputed Domain Name. It is therefore clear that the registrant's name is Caner TANAOBA and consequently that the Respondent is not commonly known by the Disputed Domain Name. The Panel accepts the Complainant's submission and the evidence on which it is based.

Thirdly, the evidence shows that, so far as it is known, the Respondent is not associated with a business enterprise or a trademark in the name FRANKE or FRANKE SERVIS; the Respondent is not in any way related to the Complainant’s business, is not one of its authorised distributors and does not carry out any activity for or have any business with it.

Moreover, the Complainant has never given any authorization to the Respondent or any other entity to make any use, nor apply for registration of the domain name in issue.

The Complainant also submits that the Respondent has not by virtue of the content of the website, nor by its use of the domain name shown that the domain name will be used in connection with a bona fide offering of goods or services.That is clearly so, as is apparent from an examination of the website to which the domain name resolves. The website shows extensive use of the FRANKE trademark which must give the impression to the internet user that this is the Complainant's website or one approved by it, which it is not, and that the services offered on the website are genuine Franke services, which they are not.There is no way in which such deceptive and illegal conduct can give rise to a right or legitimate interest

in the domain name in question and the Panel so finds.

Nor can the clear intention of the Respondent to take advantage of a purported association with the Complainant and its business give rise to such a right or legitimate interest.

The Complainant has therefore made out its prima facie case. The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default.

Moreover, it must be said that the Complainant is correct in submitting that it would be impossible for the Respondent to bring itself within the principles known as the Oki Data principles relating to the rights of a distributor to register a domain name. The facts of the case make it clear that the Respondent would fail to establish any of the Oki Data principles.

Accordingly, the prima facie case has been made and not been rebutted and the Complainant has therefore made out the second of the three elements that it must establish.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

(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 on-line 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the Disputed Domain Name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) of the Policy and probably within other provisions of paragraph 4 (b).

That is so for the following reasons.

First, because of the fame and strong reputation of the FRANKE trademark, the Respondent must be presumed to have been aware of the existence of the Complainant and its reputation when it registered the Disputed Domain Name. In particular, as the Complainant submits, the Respondent must have been aware of the FRANKE trademark because it has adopted and used the trademark extensively on its website, which it had no authority to do. It has virtually asserted on the website that it is the Complainant and that , as the Complainant, it is offering the services promoted on the website, or alternatively that it

has been authorised by the Complainant to make such assertions, which it clearly has not.

Secondly, not only is such conduct by the Respondent evidence of bad faith registration and use in general, but it specifically falls within paragraph 4(b)(iv) of the Policy because the Respondent, in registering the domain name deceptively and without any authority to do so, and using it as it has, must be taken to have created a likelihood of confusion , with the intention of attracting current and potential customers of the Complainant looking for its services, particularly in Turkey and doing so in this misleading manner. Accordingly, the Disputed Domain Name was registered and used in bad faith.

Thirdly, Complainant is correct in also placing reliance on the fact that the FRANKE trademark predates the registration of the Disputed Domain Name and that the Respondent has never been authorized by Complainant to register it. Such conduct is, by itself , evidence of bad faith registration of the domain name and the Panel so finds.

Fourthly, the Complainant submits that the fact that the identity of the Respondent was hidden through an identity protection service before filing this complaint is evidence of a bad faith registration. The Panel agrees and so finds.

The Complainant also makes several submissions specifically designed to show that the Disputed Domain Name has been used in bad faith and the Panel agrees with those submissions. They are, in summary, that the Respondent forewent the opportunity it had to reply to the Complainant's cease and desist letters, but did not do so, that Respondent took advantage of the FRANKE trademark by creating a likelihood of confusion with the Complainant’s mark, the Respondent intentionally chose the Domain Name based it on the registered and well-known FRANKE trademark to generate more traffic to its own business without disclaiming an association between itself and Complainant and that the Respondent has engaged in a pattern of conduct of abusive registration of domain names based on well known trademarks which is indicative of bad faith. The Panel agrees with each of those submissions and the evidence adduced in their support. The case therefore falls squarely within the provisions of Paragraph 4(b)(ii) of the Policy.

The Panel also finds that the facts of the case bring it within Paragraph 4(b)(iii) of the Policy.

Consequently, the Disputed Domain Name has been both registered and used in bad faith, on the basis of the specific provisions of Paragraph 4(b) of the Policy and also bad faith in general.

Accordingly, the Complainant has shown that the Disputed Domain Name was registered and used in bad faith. The Complainant has thus established the third of the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRANKESERVIS.INFO**: Transferred

PANELLISTS

Name	**The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2018-02-21