Decision for dispute CAC-UDRP-103068

Case number	CAC-UDRP-103068
Time of filing	2020-05-20 08:24:55
Domain names	fretteindia.com

Case administrator

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

Complainant

Organization	Edmund Frette S.à r.l.

Complainant representative

Organization	Barzanò & Zanardo Milano S.p.A.

Respondent

Name	Tript Singh

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant and its brand "FRETTE" have over the years acquired significant worldwide success within the field of luxury linens and home furnishings. Today the Complainant's products can be found in more than 100 shops all over the world, India included.
The Complainant owns, inter alia, the following trademarks:
i) FRETTE, Indian registration no. 1528009, dating back to February 5, 2007, in class 24 and 25;
ii) FRETTE, EU registration no. 002442606, dating back to November 8, 2001, in class 3, 4, 8, 18, 21, 24, 25, 27, 28, 35, 42.
The Complainant also owns and communicates on the Internet through various domain names, the main one being <frette.com>.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
The Complainant is active in the field of luxury linens and home furnishings. Over the years, the Complainant and its brand FRETTE have acquired significant worldwide success. Today the Complainant's products can be found in more than 100 shops all over the world, India included.

I. The Respondent and the disputed domain name
The Respondent is Mr. Tript Singh. The disputed domain name was registered on January 30, 2017 and it currently redirects to a website containing sponsored links. Such links are all related to the Complainant's business.

II. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights
The Complainant owns, inter alia, the following trademarks:
i) FRETTE, Indian registration no. 1528009, dating back to February 5, 2007, in class 24 and 25;
ii) FRETTE, EU registration no. 002442606, dating back to November 8, 2001, in class 3, 4, 8, 18, 21, 24, 25, 27, 28, 35, 42.
The disputed domain name contains the Complainant's trademark FRETTE combined with the geographical term INDIA.
The Complainant notes that the mere fact that the disputed domain name wholly incorporates a Complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy (see Six Continent Hotels, Inc. v. The Omnicorp, WIPO Case No. D2005-1249 and Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903).
The Complainant is of the view that the combination between FRETTE and INDIA increases the risk of confusion as internet user could easily think that the disputed domain name hosts the Complainant's local website.
At last, the addition of a TLD in a domain name is technically required. Thus, it is well established that such element may be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see Proactiva Medio Ambiente, S.A. v. Proactiva, WIPO Case No. D2012-0182).
Therefore, the disputed domain name is confusingly similar to the earlier FRETTE trademarks, and the first requirement under paragraph 4 (a)(i) of the Policy and of paragraph 3(b), (viii), (b)(ix)(1) of the Rules is satisfied.

III. The Respondent has no rights or legitimate interests in respect of the disputed domain name
[Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2)]
According to paragraph 4(a) of the Policy, the burden of proving the absence of the Respondent's rights or legitimate interests in respect of the disputed domain name lies with Complainant. It is nevertheless a well-settled principle that satisfying this burden is unduly onerous, since proving a negative fact is logically less feasible than establishing a positive. Accordingly, it is sufficient for Complainant to produce a prima facie evidence in order to shift the burden of production to Respondent. See, e.g., Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004- 0110; Audi AG v. Dr. Alireza Fahimipour, WIPO Case No. DIR2006-0003.
The Complainant denies that the Respondent could have any right or legitimate interest in registering the disputed domain name. In particular, Mr. Tript Singh is not a Complainant's dealer, agent, distributor, wholesaler or retailer nor an entity authorized to register and use FRETTE as a domain name. The Complainant also checked the trademark databases and not trademark including FRETTE has been registered in the name of Stefano Tript Singh.
Furthermore, it is very improbable that the Respondent could be commonly known as "FRETTE", considering that FRETTE is the Complainant's trademarks and company name and also given the fact that the Respondent's name is Tript Singh.
In light of these considerations, the Complainant excludes that the Respondent is commonly known by the disputed domain name under Art. 4(c)(ii) of the Policy.
Furthermore, the disputed domain name is currently used as a basis for sponsored links. Such links are all related to the Complainant's business. Under this regard, previous panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. As a consequence, the current use of the disputed domain name could not be considered in connection with a bona fide offering of goods and services nor a legitimate non-commercial use for the purposes of the Policy.
The fact that FRETTE is a fanciful word, strengthens the circumstance that the disputed domain name was registered for the sole scope of misleading potential consumers, to tarnish the Complainant's trademark and to prevent the Complainant from reflecting its trademark in a corresponding domain name.
All above considered, the Complainant deems to have sufficiently proved the absence of rights or legitimate interests in the disputed domain name.

IV. The disputed domain name was registered and is being used in bad faith
[Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3)]

In accordance with paragraph 4(a)(iii) of the Policy, in order to succeed in a UDRP proceeding, the Complainant must prove, as a third and last requirement, that the Respondent registered and used the disputed domain name in bad faith.
As far as registration in bad faith is concerned, the Respondent registered domain name contains a well-known third party's trademark without authorization. The Respondent could not ignore the existence of the FRETTE trademark at the time of the registration of the disputed domain name as all the sponsored links are related to the same industry of the Complainant. It is very significant that some of these links are related to the Complainant's website.
Furthermore, the disputed domain name has been registered long after the filing/registration of the Complainant's trademarks, INDIA included.
Also, the fact that in the disputed domain name, FRETTE is combined with INIDA is a further index of registration in bad faith as users could easily think that the disputed domain name is part of the Complainant's official network.
As far as use in bad faith is concerned, <fretteindia.com> is actually used for sponsoring pay-per-click links. Under this regard, previous panels found that, with reference to pay-per-click, a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).
Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.
As previously said, the pay-per-click links on <fretteindia.com> are all related to the same industry of the Complainant. Such links are not justified by a dictionary meaning of the term FRETTE which is a fantasy word. Therefore, the use of the disputed domain name should be considered in bad faith.
All above considered, the Complainant deems to have sufficiently proved the third and last requirement of the policy.

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).

This is a case of adding a generic, geographical term to a somewhat well-known trademark and in respect of the well-established practice that the specific top level of a domain name such as ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

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).

The Complainant contends that the Respondent uses the Complainant's trademark to advertise for goods similar to the Complainant's goods and area of business without being affiliated or authorized by the Complainant.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark FRETTE and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.
The Panel, therefore, finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. In this case, the Complainant has however evidenced that the disputed domain name enabled the Respondent to capitalize from link-sharing and advertising using the Complainant's trademark as part of the disputed domain name.

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. The three essential issues under the paragraph 4(a) of the Policy are whether:

i. the disputed 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 with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel, therefore, came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website were used by the Complainant long before the disputed domain name was registered. There is no present use of the disputed domain name but there is evidence that the disputed domain name was used for advertising goods similar to the Complainant's goods.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRETTEINDIA.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2020-07-01

Publish the Decision