

Decision for dispute CAC-UDRP-106536

Case number CAC-UDRP-106536

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Domain names frankefr.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Franke Technology and Trademark Ltd

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Justin AKenney

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademark registrations for "FRANKE", including the following:

- International trademark registration no. 387826 for FRANKE (design), registered on February 17, 1972;
- International trademark registration no. 581340 for FRANKE (design), registered on October 24, 1991;
- International trademark registration no. 975860 for FRANKE, registered on June 14, 2007;
- United States trademark registration no. 1559709 for FRANKE (design), registered on October 10, 1989;
- United States trademark registration no. 6303216 for FRANKE, registered on October 10, 1989;
- United States trademark registration no. 3261243 for FRANKE (design), registered on July 10, 2007;
- Switzerland trademark registration no. P-386227 for FRANKE (design), registered on October 3, 1991; and
- European Union trademark registration no. 0872557 for FRANKE, registered on February 2, 2005.

The Complainant owns numerous domain names, including the following:

- <franke.com>, registered on April 23, 2006;
- <franke.eu>, registered on March 18, 1996;
- <franke.fr>, registered on December 21, 1997; and
- <franke.cn>, registered on May 7, 2003.

FACTUAL BACKGROUND

Complainant is part of the Franke Group, a group of companies based in Switzerland. Founded in 1911, the Franke Group has provided devices and systems for kitchens, bathrooms, professional foodservices and coffee preparation. The Franke group employs over 8,000 persons in sixty-two companies in 36 countries. In 2022, the Franke group's net sales were CHF 2.54 billion. The Franke group has an active business presence in France as well as in the United States. Companies of the Franke group are established and operate in these countries, such as Franke France S.A.S. and Franke Foodservice Systems Americas Inc.

The Respondent is Justin AKenny with address at 4084 Michigan AvenueYukonPAUnited States null, Yukon Palau, USA.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the FRANKE mark.

In this case, the disputed domain name contains the entirety of the Complainant's FRANKE trademark with the addition of the suffix "fr". It is well-established that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. (see WIPO Overview 3.0, section 1.8).

In addition, the disputed domain name comprises the Complainant's FRANKE trademark and the generic Top-Level Domain ("gTLD") ".com". It is well established that the addition of a gTLD ".com" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the FRANKE mark long before the date that the disputed domain name was registered and that it is not licensed or otherwise authorised the Respondent to use the Complainant's trademark.

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name. See WIPO Overview 3.0, section 2.3. The Complainant has not consented to the use of its FRANKE trademark, in the disputed domain name.

It is noted that the disputed domain name resolves to a webpage mimicking the design and content of the Complainant's official website, and offering for sale, goods bearing or sold under the FRANKE trademark at steep discounts of almost 80%. The website also implies a direct association to the Complainant and its FRANKE marks and provides no disclaimer as to the lack thereof. The website also does not identify the person operating the website and their relationship to the Complainant or lack thereof. Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant provided evidence that the disputed domain name resolves to a webpage that mimics the Complainant's own official website, containing the Complainant's FRANKE mark, with no disclaimers distancing ownership from the Complainant. Further, the Respondent is offering goods bearing, or sold under the Complainant's FRANKE trademark for sale at steep discounts, of almost 80%. This is an indication that the goods sold are likely counterfeit goods, and the Respondent likely acquired the disputed domain name to specifically target the Complainant. This is evidence of bad faith registration and use of the disputed domain name.

Further, the Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant registered the FRANKE trademark. Given that the FRANKE mark is highly distinctive, it is unlikely that the Respondent was not aware of the Complainant prior to the registration of the disputed domain name. In view of the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its FRANKE trademark at the time of registering the disputed domain name and specifically targeted the Complainant for an unknown reason.

The Respondent failed to submit a response and did not provide any explanation for registering the disputed domain name nor evidence of good-faith use; the registered address provided is a mismatch of various locations and appears to be fictitious; and did not reply to the Complainant's cease and desist letter dated February 23, 2024. The Panel draws an adverse inference accordingly.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including (1) the registration of the disputed domain name long after the registration of the Complainant's trademark, (2) the incorporation of the Complainant's trademark with the addition of a suggestive suffix, (3) the reputation of the Complainant in the FRANKE trademark, (4) the failure of the Respondent to submit a response, and (5) the Respondent's non-provision of genuine address details, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

Accepted

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

1. **frankefr.com**: Transferred
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PANELLISTS

Name	Jonathan Agmon
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DATE OF PANEL DECISION 2024-06-24

Publish the Decision
