

## **ADMINISTRATIVE PANEL DECISION**

Les Parfumeries Fragonard v. [Name Redacted]  
Case No. D2022-4186

### **1. The Parties**

The Complainant is Les Parfumeries Fragonard, France, represented by Inlex IP Expertise, France.

The Respondent is [Name Redacted], France.

### **2. The Domain Name and Registrar**

The disputed domain name <fragonardmsk.com> (the “Disputed Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 9, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. An email (described below) was received from a third party on November 23, 2022.

The Center appointed Isabelle Leroux as the sole panelist in this matter on December 21, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a renowned French company in the cosmetic field and particularly for perfumes products named "Parfumerie Fragonard" which was adopted in 1926.

The Complainant is the owner of numerous trademarks in particular the following:

- French word trademark "FRAGONARD", No.1327342, registered on October 18, 1985 and duly renewed, designating products in Class 3, including soaps, perfumery, essential oils, cosmetics, hair lotions and toothpaste;
- French word trademark "FRAGONARD PARFUMEUR", No. 1661663, registered on May 14, 1991 and duly renewed, designating products in Class 3 ("FRAGONARD Trademarks").

The Complainant has several websites whose domain name contains the term "Fragonard", in particular its official website "www.fragonard.com".

According to the ICANN public database, the Respondent's identity is shown as "PERFECT PRIVACY LLC" and the Disputed Domain Name was registered on March 28, 2018.

Based on the information disclosed by the Registrar, the Respondent is an individual whose postal address is stated to be in "Paris, 92240, France".

However, this information does not seem to be accurate since the postcode (92240) is not that of Paris but that of a town next to Paris, *i.e.*, Malakoff.

In addition, the email address of the Respondent, as registered with the Registrar, is an address registered with a Russian email service provider "mail.ru".

The Disputed Domain Name resolves to a website edited in Russian offering perfume products branded "FRAGONARD" and reproducing the Complainant's FRAGONARD Trademarks and its products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims that:

- a) The disputed domain name is identical or at least confusingly similar to the Complainant's prior Trademarks since it reproduces the verbal sign "FRAGONARD" of the FRAGONARD Trademarks in full, which is well-known for perfume products. The addition of the term "msk" at the end is descriptive since it refers to a time zone that is commonly referred to as Moscow time.
- b) The Respondent has no rights nor legitimate interests in the disputed domain name since:
  - There is no trademark has been filed or registered under the name of the Respondent;
  - There is no business or legal relationship between the Complainant and the Respondent;
  - The Complainant has neither authorized nor licensed the Respondent to use its FRAGONARD Trademarks in any way;

- The Respondent is using the Disputed Domain Name to create a high risk of confusion for consumers who would think that the Respondent is an authorized retailer of the Complainant, which is not the case

c) The Respondent has registered and used the disputed domain name in bad faith given the following factors:

- The Respondent has registered the Disputed Domain Name in bad faith since FRAGONARD Trademarks are well-known for perfume products and since it makes use of the Complainant's trademarks, logo and pictures on the website associated with the Disputed Domain Name;

- The Respondent's use of the Disputed Domain Name is in bad faith since it takes undue advantage of the well-known of FRAGONARD Trademarks for the purposes to create traffic on its website.

In support of its claims, the Complainant has provided screenshots of the website associated with the Disputed Domain Name which show that the website offers for sale various products of FRAGONARD brand which are identical to those offered for sale on the Complainant's official website.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. The Center did however receive an email from an individual claiming that his information had been used without authorization when registering the Disputed Domain Name; this individual disclaimed any affiliation with the Disputed Domain Name or related website and stated that he filed a complaint about this with the Respondent using the webform available at the Disputed Domain Name. On this basis, the Panel has considered it appropriate to redact this person's name from the case.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the FRAGONARD Trademarks (which have been filed and registered numerous years before the registration of the Disputed Domain Name).

Then, the Panel notices that the Disputed Domain Name is composed of the identical reproduction of the FRAGONARD Trademark in its entirety, to which has been added the word "msk", and the generic Top-Level Domain ("gTLD") ".com".

The mere addition of the term "msk", which noting the Russian language on the related website seems to refer to Moscow time zone, does not prevent a finding of confusing similarity since the FRAGONARD Trademarks are fully recognizable in the Disputed Domain Name.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the trademarks in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Numerous UDRP panels have found that, even though the Complainant bears the general burden of proof under paragraph 4(a) (ii) of the UDRP, the burden of production shifts to the Respondent once the Complainant makes a *prima facie* showing that the Respondent lacks rights or legitimate interests.

Hence, after the Complainant has made a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name, it will be deemed to have satisfied paragraph 4(a)(ii) of

the UDRP when the Respondent fails to submit a response.

In this case, the Complainant brings forward the following assertions:

- There is no trademark has been filed or registered under the name of the Respondent;
- There is no business or legal relationship between the Complainant and the Respondent;
- The Complainant has neither authorized nor licensed the Respondent to use its FRAGONARD Trademarks in any way;
- The associated website offers products branded with FRAGONARD Trademarks so that there is a high risk of confusion for consumers who will think that the Respondent is an authorized retailer of the Complainant, which is not the case.

It is noted that the Complainant did not make any claim that the products offered for sale on the website at issue would be counterfeit. The Panel thus considers that the products may be genuine products of the FRAGONARD Trademarks.

Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation, even in the presence of an additional term and, especially, in the case of the addition of a geographic term, which is seen as tending to suggest sponsorship or endorsement by the trademark owner.

This being said, UDRP panels have also found that a further examination of the broader facts and circumstances of the case – particularly including the associated website content – is necessary to assess potential respondent rights or legitimate interests, in particular, in the case of nominative use by resellers or distributors.

In this respect, as indicated in section 2.8.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), UDRP panels have recognized that resellers or distributors using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name, if its use meets certain requirements. Outlined in the "*Okidata* test" as set out in the case of *Okidata Americas, Inc. v. ASD, Inc.* Case No. [D2001-0903](#), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (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.

In a later decision, the same panel (sitting as one of a three-member panel) that decided *Okidata* observed that the four-part test shall also apply to non-authorized retailers. See, e.g., *National Association for Stock Car Auto Racing, Inc. v. Racing Connection / The Racin' Connection, Inc.*, WIPO Case No. [D2007-1524](#); citing *Volvo Trademark Holding AB v. Peter Lambe*, WIPO Case No. [D2001-1292](#).

In the matter before this Panel, the Respondent did not submit any response. However, regardless of whether the Respondent is an authorized reseller or not, the *Okidata* principles shall be used to consider whether the Respondent has a right or legitimate interest.

Applying the *Okidata* test in the current proceeding, the Panel finds that, based on the evidence provided by the Complainant, the Respondent meets the first and second conditions of the *Okidata* test, more precisely:

- the Respondent is actually using its website at the disputed domain name offering products of the trademark at issue;
- the Respondent uses the website at issue to sell only the FRAGONARD trademarked goods, and there is no evidence of it having engaged in “bait and switch” activities;

The Panel must then consider whether the Respondent meets the third and fourth conditions of the *Oki Data* test.

However, only partial screenshots were provided by the Complainant about the website at issue and are not sufficient to determine whether the Respondent has made any false or misleading statement on its website suggesting an eventual false affiliation between the parties.

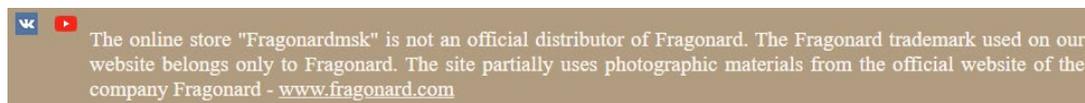
It is reminded that the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision (See section 4.8 of the [WIPO Overview 3.0](#)).

In the present matter, the Panel decides that it has the power to examine the website at issue, since the information on the existence or not of an accurate disclosure of the relationship between the Respondent and the Complainant on the website at issue is necessary to assess the case merits and reach a decision.

It is noted that the website at issue is edited in Russian. Based on a machine translation provided by Google, the home page of the Respondent’s website contains a disclaimer on the bottom of the page stating the following:



(Excerpt of the home page at “<https://www.fragonardmsk.com/>”)



(Machine translation by Google Translation)

- “The online store “Fragonardmsk” is not an official distributor of Fragonard. The Fragonard trademark used on our website belongs only to Fragonard. The site partially uses photographic materials from the official website of the company Fragonard - [www.fragonard.com](http://www.fragonard.com)” (Machine translation by Google)

It results from such disclaimer that the Respondent did not provide any false or misleading statement as to its relationship with the Complainant. On the contrary, it clearly states that it is not an official distributor of the Complainant.

This being said, it has to be noticed that on the website of issue, the sign “FRAGONARD Parfumeur” is prominently displayed on the top of the home page without addition or modification (please see below), whereas the aforementioned disclaimer is displayed on the bottom of the page in smaller size.



(Excerpt of the home page at “<https://www.fragonardmsk.com/>”)

Moreover, the home page of the website at issue imitates the official website of the Complainant's at "www.fragonard.com" by using the identical sign "FRAGONARD Parfumeur" as header which is displayed in an identical way or at least highly similar to the use by the Complainant in terms of the position, the font and the composition (please see below).



(Excerpt of the official site of the Complainant)

It is also noted that the Respondent acknowledges that it uses copyrighted materials from the Complainant's own site.

There is therefore a potential risk that, when visiting the website at issue, a consumer of average attention may not necessarily notice the disclaimer on the bottom of the web page but is more likely to be attracted by the sign "FRAGONARD Parfumeur" displayed in the header on the top section of the home page, which is usually understood as an indication of the origin of the products or services offered on a given website.

In these circumstances, the Panel considers that, despite the existence of the disclaimer, the associated website does not prominently display such statement. On the contrary, the Respondent uses an identical or highly similar way, the logo of the Complainant as the header of its website to attract Internet users, which may help to create a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement.

The third requirement under *Oki Data* test is thus not satisfied.

As to the fourth *Oki Data* criteria, the website at the Disputed Domain Name displays an email address using "fragonardmsk.ru" which seems to indicate a pattern by the Respondent of registering domain names targeting the Complainant's mark.

Above all, the Panel notes, as described in section 2.5.1 of the WIPO Overview, that especially insofar as "msk" is supposed to refer to a geographic term (by reference to a time zone), the Disputed Domain Name carries a risk that it implies a non-existent affiliation with the Complainant as it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Given these circumstances, the Panel finds that the second element of paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

The Panel considers that the Respondent could not plausibly ignore the existence of the Complainant's Trademarks at the time the Disputed Domain Name was registered since it was registered several years after the registration of the Complainant's trademarks and uses the Disputed Domain Name and makes express reference to the FRAGONARD Trademarks throughout the site.

Therefore, the Respondent must have had the Complainant's Trademarks in mind at the moment of registration of the Disputed Domain Name.

The use of a privacy proxy service and inaccurate address, seemingly misappropriated from a third party, for the registration of the Disputed Domain Name is another indication of bad faith.

It is also clear from the evidence that the Disputed Domain Name is not completely being used in good faith. As already demonstrated in section C here above, the imitation of the Complainant's official website's header and the use of the Complainant's logo characterize the Respondent's intention to attract Internet users by imitating the Complainant's Trademarks and its activity. The Panel moreover notes that the Respondent seems to have registered, or is affiliated with, other domain names incorporating the Complainant's mark.

Therefore, the Panel finds that the Respondent registered and used the Disputed Domain Name in bad faith.

Consequently, the Panel finds that the third and final element of the Policy is met.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <fragonardmsk.com> be transferred to the Complainant.

*/Isabelle Leroux/*

**Isabelle Leroux**

Sole Panelist

Date: January 4, 2023