

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Zgvfdd Unjfd
Case No. D2023-5340

1. The Parties

The Complainant is Chewy, Inc., United States of America (U.S.), represented by Winterfeldt IP Group PLLC, U.S.

The Respondent is Zgvfdd Unjfd, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <dogfrisco.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 January 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 23, 2024.

The Center appointed Flip Petillion as the sole panelist in this matter on February 5, 2024. 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, Chewy, Inc., is an American company founded in 2011 operating in the pet supplies retail and pet wellness-related services business. The Complainant employs more than 19,000 people and had net sales of over \$10 billion in its 2022 fiscal year.

The Complainant is the owner of numerous trademarks including the following:

- FRISCO, U.S. wordmark registered under No. 5,382,635 on January 16, 2018, in classes 16, 20, and 31;
- FRISCO, European Union wordmark registered under No. 018351786, on May 1, 2021, in classes 3, 5, 6, 9, 12, 16, 18, 20, 21, 24, and 28;
- FRISCO, Canadian wordmark registered under No. TMA1092592 on January 27, 2021, in classes 5, 6, 12, 16, 18, 20, 21, 24, and 28;
- FRISCO, Australian wordmark registered under No. 2060122 on January 2, 2020, in classes 6, 12, 16, 18, 20, 21, and 28;
- FRISCO, Mexican wordmark registered under No. 2125355 on September 7, 2020, in class 16;
- CHEWY, U.S. wordmark registered under No. 5028009 on August 23, 2016, in class 35.

The Disputed Domain Name was registered on June 24, 2022. According to the Complainant's evidence, the Disputed Domain Name appeared resolve to a website offering pet supplies for sale and displaying both the Complainant's FRISCO trademark and the Complainant's CHEWY trademark and company name. The Panel observes that the Disputed Domain Name currently redirects to the Google search webpage "www.google.com".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights. According to the Complainant, the addition of a descriptive term, such as "dog" to an established trademark in a domain name does nothing to avoid a finding of confusing similarity, and this confusion is not obviated by TLD extensions such as ".com".

The Complainant further claims that the Respondent has no legitimate interests in respect of the Disputed Domain Name as:

- the Respondent has never been authorized by the Complainant to use the FRISCO and CHEWY marks in any manner, much less as part of the Disputed Domain Name;
- the Disputed Domain Name was registered well after the Complainant had registered the FRISCO and CHEWY marks and had established extensive goodwill;
- the Disputed Domain Name does not reflect the Respondent's common name;
- the Respondent is using the Disputed Domain Name to infringe and cybersquat upon the Complainant's rights in its globally famous and well-known FRISCO and CHEWY marks;
- the Respondent is monetizing the Disputed Domain Name by trading on the goodwill associated with the FRISCO and CHEWY marks to draw Internet users to the Respondent's Website. Such use of the

Disputed Domain Name does not constitute any legitimate bona fide sale of goods or services or legitimate non-commercial or fair use.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Respondent has engaged in a bad faith pattern of targeting multiple domain names reflecting the Complainant's FRISCO mark within the meaning of paragraph 4(b)(ii) of the Policy;
- the Respondent is disrupting the Complainant's business by diverting business and prospective business away from the Complainant and its goods and services and therefore evidences bad faith under paragraph 4(b)(iii) of the Policy;
- the Respondent has intentionally attracted Internet users for commercial gain, claiming to offer pet goods and services for sale through its competing imitation website, creating a likelihood of confusion with the Complainant's FRISCO and CHEWY marks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. The Complainant contends that this constitutes bad faith under paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel observes that the entirety of the FRISCO mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of another term – here, “dog” – does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.com”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task

of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Zgvfdd Unjfd”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant’s mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant’s FRISCO trademark in its entirety and merely adds the descriptive term “dog”. In the Panel’s view, both terms can be easily linked to the Complainant’s pet products retail business. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant’s evidence, the Disputed Domain Name appeared to resolve to a website offering pet products for sale and displaying product pictures bearing the Complainant’s FRISCO and CHEWY trademarks. The pet products offered on the website at discounted prices seemed to be identical or similar to those sold by the Complainant. The Panel finds that this does not amount to a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the Disputed Domain Name. Moreover, the Respondent does not accurately and prominently disclose its relationship with the Complainant. As a result, the Respondent fails the so-called “Oki Data test” for legitimate resellers, distributors or service providers of a complainant’s goods or services. See *Oki Data Americas, Inc v. Albert Jackson*, WIPO Case No. [D2004-0087](#).

The Panel observes that the Disputed Domain Name currently resolves to the Google search webpage “www.google.com”. In the Panel’s view, this does not amount to any legitimate noncommercial or fair use or use in connection with a bona fide offering of goods and services either.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

As established above, the Complainant's has shown that the Disputed Domain Name resolved to a website offering pet products for sale, displaying the Complainant's CHEWY and FRISCO trademarks. In the Panel's view, the circumstances of this case indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. [WIPO Overview 3.0](#), section 3.2.4.

Moreover, the Panel finds that the Respondent has also engaged in a pattern of bad faith conduct of targeting the Complainant's FRISCO mark. In a similar case involving the Respondent and the Complainant, the panel found that the Respondent registered and used the domain name <friscopet.store> in bad faith. See *Chewy, Inc. v. Zgvfdd Unjfd*, WIPO Case No. [D2022-4745](#).

Other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Disputed Domain Name incorporates the Complainant's distinctive trademark in its entirety, and combines it with a term directly related to the Complainant's pet products and services business (namely the word "dog");
- The Disputed Domain Name appeared to resolve to a website displaying both the Complainant's FRISCO and CHEWY trademarks;
- The Respondent seemed to offer for sale products similar or even identical to the Complainant's products.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name redirecting to an unrelated web page does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Finally, the Respondent did not formally take part in the administrative proceedings and appears to have provided a false name. According to the Panel, this serves as additional indications of the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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 <dogfrisco.com> be transferred to the Complainant.

/Flip Petillion/

Flip Petillion

Sole Panelist

Date: February 19, 2024