



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1500807
<b>Complainant:</b>	PANDORA A/S
<b>Respondent:</b>	Khaoula Klai
<b>Disputed Domain Name:</b>	<france-pandora.com>

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**1. The Parties and Contested Domain Name**

The Complainant is PANDORA A/S of Hovedvejen 2, DK- 2600 Glostrup, Denmark.

The authorized representative of the Complainant is Hogan Lovells, 11/F, One Pacific Place, 88 Queensway, Hong Kong.

The Respondent is Khaoula Klai, 620 bis cours general Leclerc, Ajaccio, Corse-du-Sud 2000, France.

The domain name at issue is <france-pandora.com>. The domain name is registered with GoDaddy.com, LLC, 14455 North Hayden Road, Suite 219, Scottsdale AZ 85260, United States.

**2. Procedural History**

On October 22, 2015, the Complaint was filed with the Asian Domain Name Dispute Resolution Centre ("the Centre"). The Centre received the appropriate case filing fee on October 27, 2015, receipt of which was acknowledged by the Centre to the Complainant on November 3, 2015.

On October 23, 2015, the Centre transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the registrant of the disputed domain name. On October 24, 2015, GoDaddy.com, LLC transmitted by email its verification response that the registrant of the disputed domain name is Khaoula Klai, that its address is 620 bis cours general Leclerc, Ajaccio, Corse-du-Sud 2000, France and that its email address is hangguangu@yahoo.com. The Centre 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 ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

On November 5, 2015, the Centre served the Respondent by forwarding to it, by email addressed to " hangguangu@yahoo.com and to "postmaster@france-pandora.com" the Written Notice herein together with the Complaint and the annexures thereto. The Written Notice stated that the date of commencement of the proceedings was November 5, 2015 and that the due date by which the Respondent was required to file its Response was November 25, 2015. No Response was filed by the due date or at all and on November 30, 2015 the Centre notified the parties of that fact.

On November 30, 2015, the Centre appointed The Honourable Neil Anthony Brown QC as Panelist in the administrative proceeding. 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 Centre to ensure compliance with the Rule 7.

The Panel finds that the Asian Domain Name Dispute Resolution Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Asian Domain Name Dispute Resolution Centre Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from the Respondent.

### **3. Factual background**

The Complainant is a company incorporated pursuant to the laws of The Kingdom of Denmark and is engaged in the manufacture, marketing of distribution of jewelry. It is the owner of numerous internationally registered trademarks for PANDORA which is a recognizable and global brand that it uses in the course of its business for the promotion of its goods and services. The Complainant's business has been very successful and its trademark and products have become very well known internationally under the name PANDORA.

The Respondent registered the disputed domain name on April 23, 2014. It has been used by the Complainant to resolve to a website that gives the impression that it is associated with the Complainant and which is displaying the products of the Complainant, whereas in fact the goods are counterfeit versions of the Complainant's products.

### **Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions are as follows:

1. The Complainant has trademark rights in its registered PANDORA trademark.
2. The disputed domain name is confusingly similar to the PANDORA trademark and the inclusion of the word "france" in the domain name does nothing to dispel the confusing similarity between the domain name and the PANDORA mark.

3. That is so because the domain name incorporates the PANDORA trademark and the geographic indicator “france” describing one of the countries where the Complainant conducts its business. Accordingly, internet users would assume that the domain name was a domain name of the Complainant related to the Complainant and its business conducted in France.
4. The disputed domain name was registered by the Respondent on April 23, 2014.
5. The Respondent has no rights or legitimate interests in the disputed domain name as the Respondent has been using it in breach of the Policy to resolve to a website purporting to display products of the Complainant, but in reality displaying counterfeit products.
6. The disputed domain name was registered and is being used in bad faith as the Respondent has been using the website to which the domain name resolves to sell products purporting to be products of the Complainant, but which in reality are counterfeit goods.

B. Respondent

The Respondent failed to file a Response in this proceeding.

## 5. Findings and Discussion of the Issues

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

### A) Identical / Confusingly Similar

The first question that arises is whether the Complainant has a trademark on which it can rely.

The Complainant claims registered trademark rights in a series of registered trademarks including Trademark No. 4118900 for PANDORA, registered with the United States Patent and Trademark Office on March 27, 2012 and other registrations for PANDORA registered with the Trademark Office of the State Administration for Industry & Commerce of the Peoples’ Republic of China and the Office of Harmonization in the Internal Market, collectively referred to hereafter as “the PANDORA trademark.” The Panel has examined the evidence submitted by the Complainant in this regard and finds that the Complainant has, through those registrations, established trademark rights in the PANDORA trademark.

Accordingly, the Complainant has proved that it has a trademark on which it may rely in this proceeding.

The second question that arises is whether the disputed domain name may be said to be identical or confusingly similar to the PANDORA trademark. The Panel finds that the disputed domain name is confusingly similar to the PANDORA trademark as, in making this comparison, the

gTLD suffix “.com” is to be ignored and the objective internet user would naturally assume that a domain name incorporating the entirety of a trademark as this domain name does and adding only the word “france”, a geographic indicator of a country where the Complainant is known to conduct its business, as this domain name also does, is an official domain name that relates to the Complainant and its business in France and that it will lead to an official website of the Complainant dealing with that subject. That is because the Respondent has clearly added the word “france” to the trademark to give the impression that the domain name and the website to which it resolves are associated with the Complainant. Accordingly, the disputed domain name is confusingly similar to the PANDORA trademark.

The Complainant has therefore established the first of the three elements that it must establish.

### **B) Rights and Legitimate Interests**

It is now well established that the Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a) (ii) of the Policy and then the onus of proof shifts to the Respondent to show it does have rights or legitimate interests. There are many decisions to that effect, one of the most notable of which is *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) where it was held that a complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP before the onus of proof shifts to the respondent to show that it does have rights or legitimate interests in the domain name).

Having regard to the evidentiary case presented on behalf of the Complainant, with extracts from the Complainant's and Respondent's websites, the Panel finds that the Complainant has made out a strong *prima facie* case that arises from the following considerations:

- (a) the Respondent has chosen to take the Complainant's prominent registered PANDORA trademark and to use it in its domain name, making only the addition of the word “france” to the trademark, thus giving the impression that the domain name relates to the Complainant's business in France;
- (b) the unchallenged evidence is that the Respondent had no authority to register the domain name and to use it as it has done, namely to sell goods that purport to be the Complainant's products but which are in reality counterfeit and in circumstances where it must be assumed that this was being done for financial gain;
- (c) the Respondent has engaged in these activities without the consent or approval of the Complainant;
- (d) the Respondent on the evidence is not commonly known by the disputed domain name;
- (e) the Respondent registered the disputed domain name on 23 April 2014, considerably after the Complainant's registration of the PANDORA trademark and after the registration by the Complainant of its own domain name, <pandoragroup.com> on 18 June 2004 and after the date when it took ownership of its domain name <pandora.net> in January 2010.

These matters go to make out the *prima facie* case against the Respondent and, the onus of proof having been reversed, it is then up to the Respondent to rebut that case.

As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Complainant has thus made out the second of the three elements that it must establish.

### **C) Bad Faith**

It is clear that to establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith.

That case may be made out if there are facts coming within any of the provisions of paragraph 4(b) of the Policy. That paragraph sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, namely:

“... (i) circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.”

However, those criteria are not exclusive and Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression and frequently do so.

Having regard to those principles and to the very persuasive evidence and submission advanced on behalf of the Complainant, the Panel finds that the disputed domain name was registered and used in bad faith. That is so for the following reasons.

The Respondent registered the disputed domain name in bad faith because it must have known at all times that it had no right to register it because of the existence of the famous PANDORA trademark and the equally famous products sold under that name.

Moreover, the Respondent's website seeks to pass itself off as the Complainant by prominently displaying the Complainant's PANDORA trademark, while offering counterfeit versions of the Complainant's products.

The Respondent also used the domain name in bad faith by using it to sell goods, namely jewelry, that purportedly was jewelry made and offered for sale by the Complainant but which in reality were counterfeit versions of those products. The Respondent did this at a time when it must have known that it had no rights to the domain name at all. It is no exaggeration to say that the Respondent has acted dishonestly and had no right to obtain the domain name and use it in the way it has done or in any other way and has not attempted in a Response to explain or justify its actions. Indeed, the Panel draws the only inference that can be drawn in this regard, namely that the Respondent intended to create confusion among internet users as to the source of the disputed domain name.

These facts bring the case squarely within the provisions of paragraphs 4(b) (iii) and 4(b) (iv) of the Policy and establish bad faith registration and use.

Having regard to the totality of the evidence, the Panel finds that, in view of Respondent's acquisition of the disputed domain name and using it in the manner described, the Respondent registered and used the disputed domain name in bad faith within the generally accepted meaning of that expression.

Complainant has thus made out the third of the three elements that it must establish.

## **6. Decision**

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name, <france-pandora.com> be TRANSFERRED to the Complainant.

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The Honourable Neil Anthony Brown QC

Dated: December 2, 2015