Decision for dispute CAC-UDRP-101557

Case number	**CAC-UDRP-101557**
Time of filing	**2017-07-28 08:49:06**
Domain names	**lovehoney.online**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**Lovehoney Group Limited**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Organization	**Li Wei Wei**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the following trademarks:

- EU Trademark No. 3400298 "LOVEHONEY" (word), filed on October 10, 2003 and registered on January 17, 2005, for goods and services in classes 3, 5, 10, 25, 28, 35;

- International trademark registration No. 1091529, "LOVEHONEY" (word), based on the above-cited EU Trademark and registered on June 27, 2011, for goods and services in classes 3, 5, 10, 25, 28, 35. This international trademark registration designates, among others, China.

The Disputed domain name was registered by the Respondent on April 11, 2017.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant claims to be the largest online sex toy retailer in the UK and rapidly expanding internationally as a retailer,

manufacturer and distributor.

The Complainant points out that it received several awards for its activity.

The Complainant observes that its trademark registrations predate the registration of the Disputed domain name.

The Complainant argues that it enjoys a high degree of renown around the world, including in China where the Respondent is based. The Complainant submits that this renown is due to the extensive use, advertising and revenue associated with its trademarks.

The Complainant underlines that it registered a number of domain names under generic top-level domains and country-code top-level domains containing the term “LOVEHONEY”, for example, <lovehoney.com> (created on December 1, 1998), <lovehoney.net> (created on December 5, 2001) and <lovehoney.us> (created on April 30, 2006).

The Complainant highlights that these domain names are pointing to websites through which it informs potential customers about its "LOVEHONEY" trademark and its products and services.

The Complainant observes that the Disputed domain name, registered on April 11, 2017, directly and entirely incorporates its registered trademark "LOVEHONEY". The Complainant argues that the addition of the generic top-level domain “.online” does not add any distinctiveness to the domain name, therefore the Disputed domain name should be considered as identical to the registered trademark "LOVEHONEY".

The Complainant submits that the incorporation of the "LOVEHONEY" trademark into the Disputed domain name creates the impression that the Respondent is somehow affiliated with the Complainant, and the Respondent is somehow doing business using the Complainant`s trademark.

The Complainant underlines that it has not found that the Respondent is commonly known by the Disputed domain name. The Complainant states that the WHOIS information “Le Wei Wei” is the only evidence in the WHOIS record, which relates the Respondent to the Disputed domain name.

The Complainant argues that the Respondent has not by virtue of the content of the website, nor by the use of the Disputed domain name shown that the latter is used in connection with a bona fide offering of goods or services. The Complainant asserts that when entering the terms “LOVEHONEY” and “China” in the Google search engine, the top returned result points to the Complainant and its business activity. The Complainant points out that the Respondent could have easily performed a similar search before registering the Disputed domain name and would have quickly learnt that the "LOVEHONEY" trademarks are owned by the Complainant and that the Complainant has been using its trademarks extensively in China and around the world.

The Complainant submits that there is no evidence that the Respondent has a history of using, or preparing to use, the Disputed domain name in connection with a bona fide offering of goods and services. The Complainant asserts that it is clear that the purpose of the Disputed domain name registration is to take advantage of an association with the Complainant’s business.

The Complainant points out that the Respondent is using the Disputed domain name to attract internet users to the Respondent's website where it is used the "LOVEHONEY" logotype and slogan “the sexual happiness people” prominently on the top left hand side of the page.

The Complainant observes that the Respondent is not authorized to use the "LOVEHONEY" trademarks, and that there is no relationship between the Complainant and the Respondent. Moreover, the Complainant submits that the use of the word "LOVEHONEY" in the Disputed domain name and also on multiple occasions in the website text further creates the impression that there is some official or authorized link with the Complainant.

The Complainant notes that, due to the fact that the trademark "LOVEHONEY" is a well-known trademark and given the references to this trademark on the Respondent's website and unauthorised use of the logotype, it is clear that the Respondent knows about the existence of the "LOVEHONEY" trademark.

In addition, the Complainant underlines that the website invites visitors to contact the Respondent via the “Contact Us” form accessible on the "Contact Us" page. The Complainant asserts that the Respondent’s attempt to “phish” for users’ personal information is neither a bona fide offering of goods and services nor a legitimate noncommercial or fair use pursuant to the Policy.

The Complainant submits that the Respondent is not offering the Complainant’s products or services through the Disputed domain name, but rather appears to be offering similar products and possible fakes and counterfeits and claims to be a discount outlet, offering up to 77% discount.

The Complainant points out that the Respondent has not published on the website's pages any disclaimer clarifying that no relationship exists between the Respondent and the Complainant.

The Complainant claims that the Respondent is depriving the Complainant of reflecting its own mark in the Disputed domain name.

The Complainant observes that the Respondent presents itself as the trademark owner by using the Complainant`s official "LOVEHONEY" trademark and logotype.

The Complainant points out that, by sending a "cease and desist" letter and reminders, the Respondent has been granted several opportunities to present some compelling arguments that it has rights in the Disputed domain name but has failed to do so.

The Complainant considers that this behavior coupled with the use of the Disputed domain name cannot be considered as legitimate use of the Disputed domain name.

The Complainant highlights that its trademark registrations predate the registration of the Disputed domain name and that the Respondent has never been authorized by the Complainant to register the Disputed domain name.

The Complainant adds that the fact that the Disputed domain name includes the entire trademark of the Complainant is a further factor supporting a conclusion of bad faith.

The Complainant claims that the Respondent is using the Disputed domain name connected to a website appearing as an online shop selling the same kind of products offered for sale on the Complainant's official website. The Complainant takes the view that in this context is clear that the Respondent is taking advantage of the "LOVEHONEY" trademark by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s products, services, website or location.

The Complainant submits that it carried out a WHOIS lookup using the Respondent's e-mail address and it found 171 domain names, including domain names containing well-known trademarks. Furthermore, the Complainant notes that the Respondent was the unsuccessful part in a recent Uniform Rapid Suspension case. The Complainant pointed out that such a conduct constitutes evidence of bad faith according to Paragraph (6) (ii) of the Policy.

In light of the above, the Complainant requests the transfer in its favor of the Disputed domain name.

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).

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

Language of the Proceedings

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The language of the Registration Agreement is Chinese, therefore the language of the proceedings should be Chinese, unless otherwise agreed by the parties. The Complaint, however, was filed in English. Further to the notification of the Complaint's deficiency, the Complainant submitted a request to change the language of the proceedings into English based, inter alia, on the following reasons:

1) the Complainant's business language is English and the Disputed domain name includes the Complainant's trademark "LOVEHONEY" in its entirety;

2) the Respondent has registered a significant number of domain names containing words in English, therefore it is unlikely that the Respondent is not at least familiar with the English language;

3) the Respondent did not reply to the "cease and desist" letter and reminders sent in English, nor responded asking for the translation of the content of the letters in Chinese;

4) the Disputed domain name is in Latin characters and not in Chinese characters;

5) the content of the website associated with the Disputed domain name is in English;

6) the top-level domain chosen, ".online", is addressed to a broad audience and not limited to China;

7) the Complainant is a company based in the United Kingdom and translating the Complaint into Chinese would cause unnecessary delay and problems.

Having considered the Complainant's submission regarding the language of the proceedings and the overall circumstances of this case, including the fact that English is used in the Respondent's website, the Panel accepts English as language of the proceedings.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the Disputed domain name, the Complainant has to demonstrate that:

(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 in respect of the Disputed domain name; and

(iii) The Disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the Disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark, "LOVEHONEY", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the Disputed domain name itself to the Complainant's trademark.

The Disputed domain name differs from the Complainant's trademark only by the addition of the top-level domain ".online".

It is well established that merely adding a top-level domain to a trademark is not sufficient to distinguish a domain name from a trademark. See, for example, CAC Case No. 100831.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the Disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [Disputed] domain name or a name corresponding to the [Disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [Disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate noncommercial or fair use of the [Disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name.

The Respondent has no connection or relationship with the Complainant.

The Complainant has not authorized the Respondent to use the Complainant's trademark.

The Respondent does not appear to be commonly known by the name "LOVEHONEY" or by a similar name.

The Respondent does not appear to make any legitimate noncommercial or fair use of the Disputed domain name, nor any use in connection with a bona fide offering of goods or services.

Indeed, the Respondent is using the Disputed domain name for a website which looks like an official "LOVEHONEY" website.

In fact, the Respondent is using the Disputed domain name to attract Internet users to its website, where the Respondent is selling the same kind of products offered for sale by the Complainant.

The Respondent's website, including in a prominent way the "LOVEHONEY" trademark, strongly suggests that there is a connection with the Complainant.

Taking into account the fact that the Respondent has no connection or relationship with the Complainant, and that the Complainant has not authorized the Respondent to register the Disputed domain name or to use the Complainant's trademark, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the Disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the 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 the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [Disputed] domain name; or

(ii) [the Respondent] [has] registered the [Disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the 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, [the Respondent] [has] intentionally attempted to attract, for commercial gain,

Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the Disputed domain name was registered in bad faith and that it has been used in bad faith.

In particular, the Panel accepts the Complainant's unchallenged assertions that the Respondent is using the Disputed domain name with the aim of intentionally attracting, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website.

Indeed, it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "LOVEHONEY" when registering the Disputed domain name. If the Respondent had legitimate purposes in registering and using the Disputed domain name it would have responded to the Complainant's "cease and desist" letter, or filed a Response in this proceeding. A further evidence of bad faith is given by the fact that the Respondent registered a significant number of domain names containing well-known trademarks, thus being engaged in a pattern of abusive conduct.

Accordingly, the Panel finds that the Disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOVEHONEY.ONLINE**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2017-08-25

Publish the Decision