Decision for dispute CAC-UDRP-101641

Case number	CAC-UDRP-101641
Time of filing	2017-08-10 08:41:18
Domain names	lovehoney.top

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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 pending between the same parties and relating to the disputed domain name.

However, the Panel notes that the case no. 101557 before the CAC involved the same parties. In the case no. 101557, the panel accepted the Complainant´s complaint and decided that the disputed domain LOVEHONEY.ONLINE shall be transferred to the Complainant.

IDENTIFICATION OF RIGHTS

The Complainant presents evidence that it owns several trademarks incorporating the words “Lovehoney”, of which the following is representative for the purposes of the present proceeding: word mark LOVEHONEY, International Trademark Registration Number 1091529, registered on June 27, 2011.

Therefore, the Panel accepts that the Complainant has rights in the registered trademark above.

FACTUAL BACKGROUND

The Complainant, Lovehoney Group Limited, is a United Kingdom private company, founded in 2002, and is now considered the largest online sex toy retailer in the UK and is rapidly growing internationally as a retailer, manufacturer, and distributor.

The Complainant's website and sex toy brands are renowned around the world.

The Complainant owns several trademarks including the distinctive wording LOVEHONEY, such as the International registration no. 1091529, registered on June 27, 2011, European trademark registration no. 003400298, with the registration date of January 17, 2005, and more. The Complainant is also the owner of various domain names, including <lovehoney.com>, created on December 1, 1998, <lovehoney.net>, created on December 5, 2001, and <lovehoney.us>, created on April 30, 2006.

The disputed domain name <lovehoney.top> was registered by the Respondent identified as “Li Wei Wei” on July 28, 2017.

Currently, the disputed domain name redirects to a website offering the Complainant's products for sale and displaying the Complainant's trademarks.

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

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

Language of the Proceeding

Paragraph 11 of the Rules provides that:

“(a) 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 for the disputed domain name is Chinese, as confirmed by the Registrar in its verification email to the CAC of August 10, 2017. The Complainant requested that the language of the proceeding be English. The Respondent did not respond to the Complainant’s language request.

The Panel cites the following argumentation in below referenced WIPO Case with approval:

“Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this

agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (Groupe Auchan v. xmxzl, WIPO Case No. DCC2006-0004).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

(i) The disputed domain name consists of Latin letters, rather than Chinese letters;

(ii) The website under the disputed domain name is operated in English;

(iii) The Complainant has no knowledge of Chinese, and in the present case, the use of a language other than English would impose a significant burden on the Complainant in view of the facts in question.

Upon considering the above, the Panel determines that English be the language of the proceeding.

Principal Reasons for the Decision

1. Rights

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

The Complainant is the owner of trademark registrations for the marks LOBEHONEY, for example, International registration no. 1091529, registered on June 27, 2011, European trademark registration no. 003400298, with the registration date of January 17, 2005, and more.

The disputed domain name <lovehoney.top> reproduces the Complainant's registered trademark in its entirety with the generic Top-Level Domain ("gTLD") ".top".

The addition of the gTLD suffix ".top" does not have the capacity to distinguish the disputed domain name from the Complainant's registered trademark and is disregarded when comparing the disputed domain name with the Complainant's trademarks.

Accordingly, the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

2. Absence of 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 shifts to the Respondent to show that it has rights or legitimate interests in respect of the disputed domain name.

The Complainant has stated that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also stated that it has not licensed nor allowed the Respondent to use the disputed domain name.

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

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, due to the fact that the

Complainant has not licensed or otherwise permitted the Respondent to use the LOVEHONEY trademark, or a variation thereof.

The Respondent had not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is 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.

The Panel finds for the Complainant under paragraph 4(a)(ii) of the Policy.

3. Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (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 has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned a registration for the LOVEHONEY trademark since at least the year 2005. It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain name.

The Panel notes that the Complainant has filed a similar complaint against the Respondent that concerned its LOVEHONEY trademark. Moreover, the Panel notes that the Complainant citations regarding other proceedings and other brands, where the Respondent was unable to prove a right to use the disputed domain names, demonstrates the Respondent´s pattern of conduct, which under these circumstances is considered as bad faith registration and use of the disputed domain name.

Paragraph 4(b)(iv) of the Policy provides that it will be evidence of bad faith registration and use by a respondent, if by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or online location to which the disputed domain name resolves, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location to which the disputed domain name resolves.

The disputed domain name is identical to the Complainant's trademark. Previous UDRP panels have found that "[a] likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site." (See Edmunds.com, Inc v. Triple E Holdings Limited, WIPO Case No. D2006-1095). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

Having regard to the evidence, the Panel finds that the disputed domain name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith. The Respondent's actions, therefore, constitute bad faith registration and use of the disputed domain name.

The Panel also notes the evidence submitted by the Complainant, showing the correspondence between the Complainant and the Respondent, including the Complainant's cease-and-desist letter sent to the Respondent, and the fact that this is the second proceedings that the Complainant has commenced against the Respondent and its bad faith registration and use of domain names which are identical to the Complainant's trademark.

Based on the evidence that was presented to the Panel, including the Complainant's registered trademarks, the use of the Complainant's trademarks in the disputed domain name, the current use of the disputed domain name as a website offering products under the Complainant's brand and the Respondent's failure to answer the cease-and-desist letter and the

Complaint, the Panel finds 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOVEHONEY.TOP**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2017-09-18

Publish the Decision