Decision for dispute CAC-UDRP-101617

Case number	CAC-UDRP-101617
Time of filing	2017-07-28 08:46:57
Domain names	lovehoneysextoy.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Lovehoney Group Limited

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	MS-Infotech

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other pending proceedings between the parties or related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the proprietor of trademarks for LOVEHONEY, inter alia the International registration LOVEHONEY IR 1091529, registered on June 27, 2011 in classes 3,5,10,25, 26 and 35 and being in effect.

FACTUAL BACKGROUND

Complainant was founded in 2002 and is now the largest online sex toy retailer in the UK and is growing rapidly internationally as a retailer, manufacturer and distributor. Complainant´s website and sex toy brands are known around the world.

Complainant is using his brand LOVEHONEY also with a red heart instead of the letter O after the H.

The disputed domain name was registered on February 22, 2017.

Under the disputed domain name was, initially, an online shop for adult products available, which is not anymore. The site showed a logo for the word Lovehoney with a red heart device.

When Respondent in these proceedings declared his willingness to transfer the domain name, Complainant filed a request for suspension to arrange the transfer with Respondent. Since Respondent did not communicate further with Complainant, these proceedings continued.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT: The Complainant asserts that the disputed domain name is confusingly similar to its well-known trademarks whereas the term „sex toy“ which is descriptive for this kind of business and that there are neither rights nor legitimate interests in the disputed domain name on the part of the Respondent. The Complainant also alleges that the Respondent registered the disputed domain name with knowledge of the Complainant and its trademarks, and intentionally was attempting to attract Internet users to its website where it offered sex toys for commercial gain. Furthermore, the Respondent was initially hiding its identity behind a privacy shield. Thereby, it demonstrates that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT: The Respondent replied shortly arguing that they were not aware of the Complainant when buying the disputed domain name and that they have already deleted the site and are prepared to transfer the disputed domain name to the Complainant. As said above, further communication did not take place.

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).

The Complainant has established the fact that it has valid trademark rights for the word LOVEHONEY.

The disputed domain name is confusingly similar to this trademark of the Complainant since the addition of the terms “sex” and “toy” in the disputed domain name are of a purely descriptive nature for an adult shop selling sex toys and do not change the overall impression being created by reference to the dominate element “LOVEHONEY” which is not descriptive for this kind of business.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark LOVEHONEY in which the Complainant has rights in accordance with 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).

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term “LOVEHONEYSEXTOY” or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. The Respondent’s previous use of the disputed domain name reflecting the Complainant’s trademark for a website for sex toys and using a similar logo is not bona fide within the meaning of the Policy. The Respondent has not come forward to rebut the Complainant’s assertion in this regard.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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).
In the view of the Panel, the Respondent must have been aware of the trademarks of the Complainant when registering the disputed domain name. The Complainant has also not authorized the Respondent to make use of its trademarks. From the record, the Panel does not see any conceivable legitimate use being made by the Respondent of the disputed domain name.

The circumstances of this case, in particular the Respondent's confusingly similar use of a trademark being well known as not rebutted by the Respondent and the use of a similar logo on the website under the disputed domain name indicate that the Respondent registered and used the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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

The disputed domain name is confusingly similar to the valid trademark of the Complainant since the addition of the terms "sex" and "toy" in the disputed domain name are of a purely descriptive nature for an adult shop selling sex toys and do not change the overall impression being created by reference to the dominate element "LOVEHONEY".

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term "LOVEHONEYSEXTOY" or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. The Respondent's previous use of the disputed domain name reflecting the Complainant's trademark for a website for sex toys and using a similar logo is not bona fide within the meaning of the Policy. The Respondent has not come forward to rebut the Complainant's assertion in this regard.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOVEHONEYSEXTOY.COM**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2017-09-19

Publish the Decision