Decision for dispute CAC-UDRP-103146

Case number	**CAC-UDRP-103146**
Time of filing	**2020-07-07 11:01:53**
Domain names	**crystalnails.cloud**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Jacobs Global Kft**

Complainant representative

Organization	**Arva Trademark Law Office**

Respondent

Name	**Michele Del Monaco**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the EU trademarks CN CRYSTAL NAILS (Registration n°006281893, 014952857 and 017894989).

Moreover, the Complainant is also the owner of the domain names bearing the sign “CRYSTAL NAILS” such as <crystalnails.hu> and <crystalnails.com>.

FACTUAL BACKGROUND

The Complainant, Jacobs Global, produces and distributes artificial nail products under the trademark “CRYSTAL NAILS” through Europe and USA. The Complainant also operates <crystalnails.hu> website in Hungary and <crystalnails.com> via its affiliate Crystal nails USA (“Elite Cosmetix USA Inc.).

The Complainant holds the EU trademark registrations for “CN CRYSTAL NAILS” (Registration n°006281893, 014952857 and 017894989) and the Complainant also holds domain names bearing “CRYSTAL NAILS” such as <crystalnails.hu> and <crystalnails.com>.

The Respondent registered the disputed domain name <crystalnails.cloud> and the domain name is currently active and may be reached through the following link: https://www.crystalnails.cloud/ .

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant, Jacobs Global, is the producer and distributor of CRYSTAL NAILS artificial nail products through Europe and USA.

The Complainant holds EU trademark registrations for the trademark “CN CRYSTAL NAILS” and also is the owner of the domain names bearing the sign “CRYSTAL NAILS” such as <crystalnails.hu> and <crystalnails.com>.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant alleges that the disputed domain name <crystalnails.cloud> is confusingly similar to the Complainant’s trademark “CN CRYSTAL NAILS” as it bears the word element of the Complainant’s trademark as a whole.

The Complainant states that the deletion of the “CN” logo is not sufficient to abolish the confusing similarity between the disputed domain name and the “CN CRYSTAL NAILS” trademark.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant argues that the disputed domain name is currently active and uses the official photos of the original “CRYSTAL NAILS” products without any authorization from the Complainant. Thus, the Complainant argues that the Respondent is using the disputed domain name in a way to misleadingly divert the visitors to the disputed domain name.

Moreover, the Complainant states that no authorization has been granted to the Respondent to use the Complainant’s trademark “CN CRYSTAL NAILS”.

The Complainant also argues that the Respondent runs an online shop under the disputed domain name without any authorization and it demonstrates the lack of rights or legitimate interests.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant asserts that the disputed domain name is created by deleting “CN” logo from the Complainant’s trademark “CN CRYSTAL NAILS” which demonstrates the bad faith of the Respondent.

The Complainant alleges that the bad faith of the Respondent is supported within the fact that the disputed domain name is active and bears the official photos of the original “CRYSTAL NAILS” artificial nail products.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the “CN CRYSTAL NAILS” trademark.

The Panel finds that the disputed domain name contains the word element of the Complainant’s trademark “CRYSTAL NAILS” as a whole and the deletion of the logo “CN” within the disputed domain name is not sufficient to vanish the similarity.

Moreover, the addition of the gTLD “.CLOUD” is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark “CRYSTAL NAILS” has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademark in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that due to the earlier rights of the Complainant in the “CN CRYSTAL NAILS” trademark and the associated domain names, the Respondent, was aware of the Complainant and its trademark at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover the link https://www.crystalnails.cloud/ is currently active and bears the photos of original “CRYSTAL NAILS” products without any authorization.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element 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. **CRYSTALNAILS.CLOUD**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2020-08-19

Publish the Decision