Decision for dispute CAC-UDRP-103254

Case number	CAC-UDRP-103254
Time of filing	2020-09-14 14:45:25
Domain names	lovegoney.com, loveyoney.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Lovehoney Group Limited

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Carolina Rodrigues Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns trademark registrations for LOVEHONEY registered in different classes of Nice Classification such as but not limited to:

- US trademark registration No. 3350209 LOVEHONEY registered on 2007-12-11;

- International trademark registration No. 1091529 LOVEHONEY registered on 2011-06-27 designating Australia, Switzerland, China, Iceland, Japan, Norway, New Zeeland, Russian Federation and Singapore;

- EU trademark registration No. 003400298 LOVEHONEY, registered on 2005-01-17.

The Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “LOVEHONEY”, for example,

- <lovehoney.com> (created on 1998-12-01);
- <lovehoney.co.uk> (created on 2006-04-30);

- <lovehoney.ca> (created on 2008-09-09);
- <lovehoneygroup.com> (created on 2012-03-14).

FACTUAL BACKGROUND

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

The Complainant, LOVEHONEY Group Limited is the owner of the LOVEHONEY trademarks as set out in the Identification of rights section.

Founded in 2002, the Complainant is the largest British company selling sex toys, lingerie and erotic gifts on the Internet still growing rapidly across the world as a retailer, manufacturer and distributor.

The Complainant has over 400 own-brand products and exclusive licenses to design, manufacture and sell featured adult pleasure products. It employs around 230 people and their headquarters are open seven days a week selling products to 46 countries in Europe, North America and Australasia through nine web-sites. The Complainant's focuses on exceptional customer service, product innovation, website usability and creative marketing to always be at the forefront of developments in sexual wellbeing and e-commerce.

The Complainant's website and the products the Complainant sells have received numerous awards including the Best Customer Service Award for online retailers at the eCommerce Awards for Excellence. The Complainant is also rated as 'Excellent' in over 80,000 customer reviews on Trustpilot, the renown independent review website.

The Complainant also enjoys a strong online presence via its official websites and social media platforms. Due to extensive use and advertising, the Complainant's on-line shops are easily recognized by the consumers. A non-exhaustive list of the official pages of the Complainant are set out below:

- https://www.lovehoney.com

- https://www.lovehoney.eu

- https://www.lovehoneygroup.com

- https://www.lovehoney.co.uk

The Complainant challenges the Respondent's registration of the disputed domain names <lovegoney.com> and <loveyoney.com> under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy ("Policy") and seeks relief that the disputed domain names be transferred to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's Legal Grounds are set out in its Amended Complaint filed on 2020-09-21. The Panel refers to and repeats them herein seriatim.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 Panel accepts the statement in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"):

“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”.

This is, therefore, a classic case of typo-squatting where the Respondent had used the letters "g" and "y" to substitute the letter "h" in the Complainant's trademark "LOVEHONEY" to make it appear as "LOVEGONEY" and "LOVEYONEY" respectively.

A single letter substitution in the present case does not alter the Panel's view that the disputed domain names are confusingly similar to the Complainant's trademark. In a QWERTY layout keyboard, the letter "g" is to the left of the letter "h". The letter "y" is directly above the letter "h". The juxtaposition and proximity of the letters "g" and "y" to the letter "h" suggest an intentional misspelling of a trademark to make the disputed domain names confusingly similar to the Complainant’s trademark.

The Panel considers that a user typing the word "lovehoney" could easily mis-type the word "lovegoney" or "loveyoney" instead of “lovehoney”, and be directed to the Respondent's websites.

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 names within the meaning of paragraph 4(a)(ii) of the Policy.

The evidence shows that the disputed domain names were registered in January 2020, many years after the registration of the Complainant's trademark LOVEHONEY and domain names.

The Panel accepts the Complainant's evidence that it has never granted the Respondent any right or license to use the LOVEHONEY trademark within the disputed domain names nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent's website.

The Panel also accepts the Complainant’s evidence that the disputed domain names redirect to websites containing pay-per-click links which display links to "Adult Dating", "Adult toys" and "Lingerie", which are similar or related to the Complainant's business.

The Panel considers that such redirection by the Respondent suggests that there is no bona fide offering of goods or service nor a legitimate non-commercial or fair use of the disputed domain names. See Ustream.TV, Inc. v. Vertical Axis, Inc, WIPO Case No. D2008-0598.

The Panel is prepared to draw the adverse inference that the Respondent is likely profiting from the confusion likely to arise from consumers believing that the disputed domain names are connected to or associated with the Complainant's trademark LOVEHONEY and its business.

The Complainant adduced evidence that it sent ‘cease and desist’ correspondences to the Respondent without any responses from the Respondent. As the Respondent has not filed any administrative compliant response, the Panel is prepared to draw the inference that the Respondent has chosen not to contest the Complainant's claims. Accordingly, the Panel is prepared to accept on the preponderance of the evidence adduced by the Complainant that the Respondent has no rights or legitimate interests in the disputed domain names.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel accepts the Complainant’s evidence to support this ground, in particularly the Panel is persuaded by the evidence regarding the redirection by the Respondent of the disputed domain names to pay-per-click web pages with links related to the business of the Complainant as prima facie indicating that the Respondent knew or ought to have known of the

Complainant or the Complainant’s trademark or business.

The Panel is prepared to draw the adverse inference that the Respondent sought to use the disputed domain names to attract, for commercial gain, internet users to its websites by creating a likelihood of confusion with the Complainant's trademark.

Accordingly, the Panel finds that the registration of the disputed domain names and their use were in bad faith.

PROCEDURAL FACTORS

1. Administrative Deficiencies

By notification dated 2020-09-14 and in accordance with Paragraph 4(d) of the Rules, the CAC notified the Complainant that it was administratively deficient in that it had not sufficiently identified the Respondent and the Registrar.

On 2020-09-14, the CAC notified the Complainant of the Registrar’s Verification concerning the disputed domain name; and also requested the Complainant correct the administrative deficiency and submit an Amended Complainant.

On 2020-09-21, the Complainant filed an Amended Complaint and 2020-09-21 the CAC determined that the Complaint could proceed by way of Administrative Proceeding.

The Panel considers that the administrative deficiency has now been corrected with the identification of the domain name holder as the proper Respondent.

2. Language of the proceedings request

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the Registration Agreement unless otherwise specified in that agreement or agreed by the parties.

According to the official website of the Registrar and Registrar Notification received on 2020-09-14 the language of the Registration Agreement is English.

As the Respondent has failed to file an administratively compliant response, the Panel will proceed to determine the proceeding in the English language.

The Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision and accordingly, this matter can proceed to be considered by the Panel in accordance with the Policy and the Rules.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain names are a classic case of typo-squatting that uses the Complainant's trademark by substituting a single letter in the trademark with another letter so as to change their identity but they remains confusingly similar to the Complainant's trademark.

The disputed domain names are then used to redirect to pay-per-click websites that offer goods or services similar or related to that of the Complainant, which could only be inferred that the Respondent do not have any rights or legitimate interests in the disputed domain names.

The business of selling sex toys, lingerie and erotic gifts is likely to attract large internet users. The disputed domain names are registered by the Respondent to capitalise on the Complainant's business reputation and trademark. Such registration and use can only be inferred to have been done in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOVEGONEY.COM**: Transferred
2. **LOVEYONEY.COM**: Transferred

PANELLISTS

Name	**Adjunct Prof William Lye, OAM QC**

DATE OF PANEL DECISION 2020-10-24

Publish the Decision