Decision for dispute CAC-UDRP-103917

Case number	CAC-UDRP-103917
Time of filing	2021-07-07 09:38:14
Domain names	lpvehoney.com, lovehoneyy.com, lovehhoney.com, loovehoney.com, llovehoney.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Lovehoney Group Limited

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	yan zhang

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the LOVEHONEY trademark such as such as but not limited to:
- Chinese trademark registration No. 27012901 LOVEHONEY registered on October 7, 2019;
- US trademark registration No. 3350209 LOVEHONEY registered on December 11, 2007; and
- International trademark registration No. 1091529 LOVEHONEY registered on June 27, 2011 designating Australia, Switzerland, China, Iceland, Japan, Norway, New Zeeland, Russian Federation and Singapore.

FACTUAL BACKGROUND

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

The Complainant was founded in 2002. The Complainant is one of the largest British companies selling sex toys, lingerie and erotic gifts on the Internet continuing to grow rapidly across the world as a retailer, manufacturer and distributor. The Complainant distributes its products to 46 countries in Europe, North America and Australasia through 9 websites. The Complainant, websites and the products the Complainant sells have received numerous awards. The Complainant also

enjoys a strong online presence via its official websites and social medias.

All of the disputed domain names were registered on December 15, 2020.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in trademark LOVEHONEY (e.g., US trademark registration No. 3350209 LOVEHONEY registered on December 11, 2007; international trademark registration No. 1091529 LOVEHONEY registered on June 27, 2011, etc.). Each of the disputed domain names is confusingly similar to the Complainant's trademark LOVEHONEY.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent bears no relationship to the Complainant or its LOVEHONEY trademark and is not commonly known by the disputed domain names. The Complainant has never granted the Respondent any right or license to use LOVEHONEY trademark nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent's website. The disputed domain names redirect to the Complainant's official websites, unrelated websites, or landing pages which do not make a legitimate noncommercial or fair use of the disputed domain names.

iii) The Respondent has registered and is using the disputed domain names in bad faith. It is inconceivable that the Respondent was unaware of the existence of the Complainant and its trademark when he registered the disputed domain names due to the notoriety of the Complainant's trademark and the typosquatting practice. The Respondent had full knowledge of the Complainant's trademark at the time of registering the disputed domain names. The disputed domain names redirect to the official website of the Complainant or websites supposedly offering for sales unrelated products such as spices or mushrooms. The Respondent has registered the disputed domain names primarily for the purpose of selling them to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain names. The Whois information associated with the disputed domain names shows a privacy shield hiding the registrant's identity and contact details.

RESPONDENT:

The Respondent did not submit a response.

RIGHTS

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

PROCEDURAL FACTORS

Preliminary Issue: Language of the Proceedings

The Panel notes that the Registration Agreement is written in Japanese, thereby making the language of the proceedings in Japanese. The Complainant has alleged that because the Respondent has knowledge of the English language and understands English, the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking into consideration the particular circumstances of the administrative proceeding. See FilmNet Inc. v Onetz, FA 96196 (Forum February 12, 2001) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Korean being designated as the required language in the registration agreement because the respondent submitted a response in English after receiving the complaint in Korean and English).
In accordance with the Rules, paragraphs 11(a), 10(b) and 10(c), the Complainant requests that the Panel determine English to be the language of the proceeding for the following reasons: (a) the disputed domain names are composed of the misspelled version of brand name “LOVEHONEY” or very common English words “love” and/or “honey” that consists of very common English terms “love” and “honey” which proves that the Respondent understands English well; (b) the choice of registering and using domain names with English terms shows that the Respondent’s intention is to target Internet users who understand English; (c) majority of the disputed domain names redirect to the official websites of the Complainant displayed in English; (d) the Respondent replied to the cease-and-desist letter in English language fully understanding the content of such C&D letter that was sent in English; (e) the English language, being commonly used internationally, would be considered as neutral and fair for both parties in the present case; and (f) should the language of the Registration Agreement be different from English, a translation of the Complaint in such a language would entail significant additional costs for the Complainant and delay in the proceedings.
Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by the Complainant to suggest the likely possibility that the Respondent is conversant in the English language. After considering the circumstance of the present case, in the absence of a Response and no objection to the Complainant's request for the language of proceeding, the Panel decides that the proceeding should be in English.
The Panel is satisfied that all other procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

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PRINCIPAL REASONS FOR THE DECISION

Rights

The Complainant contends that it has rights in trademark LOVEHONEY (e.g., US trademark registration No. 3350209 LOVEHONEY registered on December 11, 2007; international trademark registration No. 1091529 LOVEHONEY registered on June 27, 2011). Registration of a mark with the WIPO or a national trademark registration agency sufficiently establishes the required rights in the mark for purposes of the Policy. Therefore, the Panel finds that the Complainant has established its rights in the mark LOVEHONEY.
The Complainant states that the disputed domain names <lpvehoney.com>, <lovehoneyy.com>, <lovehhoney.com>, <loovehoney.com>, and <llovehoney.com> are confusingly similar to the Complainant’s mark because they are merely intentional misspelling of the Complainant’s mark “LOVEHONEY.” The Panel notes that the domain name <lpvehoney.com> substituting the letter “o” in the word “love” with the adjacent keyboard letter “p”; the domain name <lovehoneyy.com> adding additional letter “y” at the end of the word “honey”; the domain name <lovehhoney.com> adding additional letter “h” in the word “honey”; the domain name <loovehoney.com> adding additional letter “o” in the word “love”; and the domain name <llovehoney.com> adding additional letter “l” in the beginning of the word “love.” Intentionally misspelling a mark while adding a gTLD fails to sufficiently distinguish a disputed domain name from a mark per paragraph 4(a)(i) of the Policy. See WordPress Foundation v. Bernat Lubos, FA 1613444 (Forum May 21, 2015) (finding that the <worspress.org> domain name is confusingly similar to the WORDPRESS mark under paragraph 4(a)(i) of the Policy, stating, “On a standard QWERTY keyboard, the letters ‘s’ and ‘d’ are adjacent. A minor misspelling is not normally sufficient to distinguish a disputed domain name from a complainant’s mark.”). Therefore, the Panel finds each of the disputed domain names is confusingly similar to the Complainant’s mark per paragraph 4(a)(i) of the Policy.

No rights or legitimate interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy, then the burden shifts to the Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent bears no relationship to the Complainant or its LOVEHONEY trademark. The Complainant has never granted the Respondent any right or license to use LOVEHONEY trademark nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent's website. The Respondent is not commonly known by the disputed domain names. When a response is lacking, relevant WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy. See Amazon Technologies, Inc. v. LY Ta, FA 1789106 (Forum June 21, 2018) (concluding a respondent has no rights or legitimate interests in a disputed domain name where the complainant asserted it did not authorize the respondent to use the mark, and the relevant WHOIS information indicated the respondent is not commonly known by the domain name). Additionally, lack of authorization to use a complainant's mark may indicate that the respondent is not commonly known by the disputed domain name. See Emerson Electric Co. v. golden humble / golden globals, FA 1787128 (Forum June 11, 2018) ("lack of evidence in the record to indicate a respondent is authorized to use [the] complainant's mark may support a finding that [the] respondent does not have rights or legitimate interests in the disputed domain name per paragraph 4(c)(ii) of the Policy"). The WHOIS information for the disputed domain names lists the registrant as "yan zhang," and the Complainant argues there is no other evidence to suggest that the Respondent was authorized to use the LOVEHONEY mark. Therefore, the Panel finds the Respondent is not commonly known by the disputed domain names per paragraph 4(c)(ii) of the Policy. The Complainant further contends that the disputed domain names redirect to the Complainant's official websites, unrelated websites, or landing pages which do not make a legitimate non-commercial or fair use of the domain names. The Panel finds that such a use of the disputed domain names does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use.
The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the 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 domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source,

sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.

The Complainant contends that the disputed domain names are confusingly similar to its well-known trademark. Consequently, given the notoriety of the Complainant's trademark and the Respondent’s typosquatting pattern in the disputed domain names, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.
While constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent’s bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014- “The Panel notes that although the UDRP does not recognize ‘constructive notice’ as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it.”). The Panel infers, due to the notoriety of the Complainant's mark and the Respondent’s pattern of typosquatting in the disputed domain names that the Respondent registered the disputed domain name with actual knowledge of the Complainant’s rights in the LOVEHONEY mark and finds that it registered the disputed domain name in bad faith per paragraph 4(a)(iii) of the Policy.
The Complainant contends that the disputed domain names redirect to the official websites of the Complainant or websites supposedly offering for sales unrelated products such as spices or mushrooms. This may be considered evidence of bad faith attraction for commercial gain. See G.D. Searle & Co. v. Celebrex Drugstore, FA 123933 (Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website); see also Bank of Am. Fork v. Shen, FA 699645 (Forum June 11, 2006) (holding that the respondent’s previous use of the <bankofamericanfork.com> domain name to maintain a web directory was evidence of bad faith because the respondent presumably commercially benefited by receiving click-through fees for diverting Internet users to unrelated third-party websites); see also PopSockets LLC v. san mao, FA 1740903 (Forum Aug. 27, 2017) (finding disruption of a complainant’s business which was not directly commercial competitive behavior was nonetheless sufficient to establish bad faith registration and use per paragraph 4(b)(iii) of the Policy). Therefore, the Panel finds bad faith registration and use under paragraph 4(b)(iii) and (iv) of the Policy.
The Complainant also contends that the Respondent registered and uses the disputed domain names in bad faith as the Respondent engaged in typosquatting. The purposeful misspelling of a mark constitutes typosquatting and can demonstrate bad faith per paragraph 4(a)(iii) of the Policy. See Cost Plus Management Services, Inc. v. xushuaiwei, FA 1800036 (Forum Sep. 7, 2018) (“Typosquatting itself is evidence of relevant bad faith registration and use.”). Therefore, the Panel finds the Respondent registered and uses the disputed domain names in bad faith per 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. **LPVEHONEY.COM**: Transferred
2. **LOVEHONEYY.COM**: Transferred
3. **LOVEHHONEY.COM**: Transferred
4. **LOOVEHONEY.COM**: Transferred
5. **LLOVEHONEY.COM**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2021-08-17

Publish the Decision