

Decision for dispute CAC-UDRP-103968

Case number	CAC-UDRP-103968
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Time of filing	2021-08-16 11:13:10
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Domain names	lovehoney.gay
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Lovehoney Group Limited
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Name	Jess McCarthy
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant owns trademark registrations for LOVEHONEY including:

- US trademark registration number 3350209, registered on 11 December 2007 in classes 3; 5, 10, 25, 28 and 35;
- International trademark registration number 1091529, registered on 27 June 2011 in classes 3, 5, 10, 25, 28 and 35; and
- EU trademark registration number 003400298, registered on 17 January 2005 in classes 3, 5, 10, 25, 28 and 35.

FACTUAL BACKGROUND

The Complainant is a UK based company that sells sex toys, lingerie and erotic gifts on the Internet. It owns several trademark registrations for LOVEHONEY that predate the registration of the disputed domain name. It also holds a number of domain names containing the term LOVEHONEY.

The disputed domain name was registered on 26 October 2020.

On 28 December 2020, the Complainant's representative, Brandit GmbH, sent a cease and desist letter to the Respondent via

GoDaddy, the Registrar for the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts that:

1. The disputed domain name is identical to its trademark LOVEHONEY, which predates the registration of the disputed domain name. It holds a number of domain names containing the term LOVEHONEY that are used for its official websites. These include: <lovehoney.com> (created on 1 December 1998), <lovehoneygroup.com> (created on 14 March 2012), <lovehoney.co.uk> (created on 30 April 2006); and <lovehoney.ca> (created on 9 September 2008).
2. It has strong online presence and has received numerous awards including the Best Customer Service Award for online retailers at the eCommerce Awards for Excellence, Queen's Award for Enterprise in International Trade (2021), Best Online Retailer (2020), International Pleasure Products Company of The Year (2020).
3. The Respondent has no rights or legitimate interests in the disputed domain name, which was created many years after the registrations of the Complainant's LOVEHONEY trademarks. The Complainant has not granted the Respondent any right or licence to use the LOVEHONEY trademark in the disputed domain name, nor endorsed or sponsored the Respondent or the Respondent's website, nor is the Respondent affiliated to the Complainant. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademark including the terms "lovehoney.gay". An Internet search for the term "lovehoney" or "lovehoney.gay" return results that relate to Complainant's official websites.
4. At the time of filling of the Complaint, the disputed domain name resolved to an active pay-per-click page containing the links to third party's websites. This is not a bona fide offering of goods and services
5. As the available WHOIS records had no contact information the Complainant could use to contact the Respondent, a cease and desist letter was sent to the Respondent via the abuse contact of the Registrar. The Respondent did not reply.
6. The disputed domain name was registered and is being used in bad faith. The Respondent must have known of the Complainant when it registered the disputed domain name and most likely registered it to take advantage of reputation of the trademark and Complainant's goodwill.

RESPONDENT:

The Respondent asserts that he did not receive any correspondence from Brandit.com nor a "cease and desist" that was sent to GoDaddy. He states he did not believe there would be an issue with holding the disputed domain name and had assumed that that the Registrar, GoDaddy, would flag any issues if he had acted out of scope. He states that the holding/landing page for the disputed domain name is GoDaddy's default. He says he has not activated or used the disputed domain name in any capacity and denies that there has been any profit from it and says it is deactivated and he no longer has any control or claim to it.

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

On 30 August 2021, the Complainant requested a suspension of the proceedings as the Parties had commenced settlement negotiations. The Respondent confirmed the suspension request on 31 August 2021. The Complainant filed a Standard Settlement stating that the Parties had reached a settlement that the disputed domain name be transferred to the Complainant. The Respondent did not confirm the settlement. On 3 September 2021, the Complainant paid the additional fee in accordance with Annex A of the UDRP Supplemental Rules of the Czech Arbitration Court and the proceedings were resumed.

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 4(a) of the Policy requires the Complainant to prove each of the following three elements:

- i. the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in the disputed domain name; and
- iii. the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name is comprised of the Complainant's trademark LOVEHONEY and the top-level domain ".gay".

The top-level domain, such as ".gay", is a standard registration requirement and can be disregarded when assessing whether the disputed domain name is the same confusingly similar to the Complainant's trade mark.

Ignoring the top-level domain, ".gay", the disputed domain name is identical to the Complainant's trademark, LOVEHONEY. The Panel finds that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant has not authorised the Respondent to use the Complainant's trade mark. There is no indication that the Respondent is commonly known by the disputed domain name, and that there is no evidence that the disputed domain name is being used in connection with a bona fide offering of goods or services.

The Respondent has not disputed the Complainant's assertions nor provided any evidence that he has rights or a legitimate interest in the disputed domain name but states that it is deactivated and he has no control or claim to it.

Taking the above factors into consideration the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

REGISTERED AND BEING USED IN BAD FAITH

The Complainant has a substantial online presence using its trademark, LOVEHONEY. The Respondent used a privacy shield when registering the disputed domain name, which is comprised of the Complainant's trademark. The most likely explanation is that the Respondent knew of the Complainant and its trademark when it registered the disputed domain name.

The disputed domain name incorporates the Complainant's trademark in its entirety and any good faith use appears implausible. The disputed domain name resolves to a website containing pay-per-click links. This is not a bona fide offering of goods and services.

Taking these factors into consideration, the Panel concludes that the Respondent has registered and is using the disputed

domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **LOVEHONEY.GAY**: Transferred

PANELLISTS

Name	Veronica Bailey
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DATE OF PANEL DECISION 2021-09-08

Publish the Decision