

Decision for dispute CAC-UDRP-104100

Case number CAC-UDRP-104100

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Domain names bruichladdich.cyou

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Bruichladdich Distillery Company Limited

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Li Wei

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 several trademark registrations for "BRUICHLADDICH" such as the international trademark registration BRUICHLADDICH® n° 929602 registered since May 24, 2007.

The Complainant is also the owner of a large domain names portfolio, including the same distinctive wording BRUICHLADDICH®, such as <bruichladdich.com> registered since February 2, 1999.

FACTUAL BACKGROUND

Bruichladdich Distillery Company Limited is a Scottish alcohol manufacturer that produces a wide range of high-quality Scotch whisky named BRUICHLADDICH® since 1881.

The disputed domain name <bruichladdich.cyou> was registered on October 15, 2021 and redirects to the website "www.balvenia.com" which is displaying adult content links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant's contentions can be summarised as follows:

The disputed domain name is identical for the purposes of the Policy with the Complainant's trade mark. The trademark is incorporated in the domain name in its entirety.

The addition of the gTLD ".CYOU" is not sufficient to escape the finding that the disputed domain name is identical to the trademark BRUICHLADDICH ®. It does not change the overall impression of the designation as being connected to the trademark BRUICHLADDICH ®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

The Respondent does not have any rights or legitimate interest in the disputed domain name.

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., 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 UDRP.

The Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. See Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>.

The Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and he is not related in any way to the Complainant's business. The Complainant does not carry out any activity for, nor does it have any business with the Respondent.

Neither licence nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark BRUICHLADDICH®, or apply for registration of the disputed domain name.

The website related to the disputed domain name redirects to a Chinese language website with pornographic content and hyperlinks. This is not a legitimate interest in respect of the disputed domain name.

See WIPO Case No. D2021-2019 FENDI S.r.l. v. Wubo, Wubo ("Likewise, the Panel finds that Respondent cannot derive legitimate interests from tarnishment of Complainant's FENDI trademark by using the disputed domain name to resolve to a Chinese language website with pornographic content and hyperlinks [...] Respondent's attempts to misdirect Internet users to pornographic website content by trading off Complainant's FENDI trademark, the Panel concludes that Complainant has established the second element of the Policy.").

The domain name(s) has been registered and is being used in bad faith.

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, the use of a domain name to tarnish a complainant's trademark, including for commercial purposes in connection with pornographic content, constitutes evidence of a respondent's bad faith. See Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi, WIPO Case No. D2017-1639 (finding the respondent's use of the domain for a pornographic website constituted "a strong indication of bad faith registration and use," because it showed respondent's main purpose was "to create a likelihood of confusion among customers and/or to tarnish the Complainant's

RED BULL trademark for commercial gain or any other illegitimate benefit”); Bank of Jerusalem Ltd. v. Shek Cheung Chung, WIPO Case No. D2017-1153 (finding bad faith where the domain resolved to a website “at which adult content and links to websites at which pornographic content [was] being offered, tarnishing Complainant and its trademark, and for which Respondent [was] likely receiving commercial gain”).

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 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

The disputed domain name consists of the Complainant’s trade mark and a gTLD. The addition of a gTLD does not distinguish a domain name from a complainant’s trade mark under the Policy.

The Respondent is not authorised by the Complainant or commonly known by the disputed domain name.

Use of a trade mark for unconnected adult entertainment services does not establish rights or a legitimate interest and is not a bona fide offering of goods or services or a non-commercial fair use. It is registration and use in bad faith disrupting the business of the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BRUICHLADDICH.CYOU: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2021-11-24

Publish the Decision