

Decision for dispute CAC-UDRP-104337

Case number	CAC-UDRP-104337
Time of filing	2022-02-09 09:04:52
Domain names	CHRISTOFLESALE.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	ORFEVRERIE CHRISTOFLE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	NanShuang Ning
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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 conducts its business under the company / trade name ORFEVRERIE CHRISTOFLE.

The Complainant is owner of several registered trademarks, among which:

- the international trademark CHRISTOFLE (device) no. 147143, registered since 19 May 1950 in class 14;
- the international trademark CHRISTOFLE (device) no. 537802, registered since 16 June 1989 in classes 14, 18, 20;
- the international trademark CHRISTOFLE (word) no. 1166291, registered since 19 April 2013 in classes 3, 8, 9, 14, 15, 16, 18, 20, 21, 22, 28, 34, 35, 37, 40.

The Complainant is also owner of a portfolio of domain names, among which CHRISTOFLE.COM, registered since 15 August 1995 and resolving to the Complainant's official website.

The Complainant's rights are hereinafter referred to as the CHRISTOFLE Trademark.

FACTUAL BACKGROUND

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

Created in 1830, the Complainant is a French company. It has been using the CHRISTOFLE Trademark for several years and enjoys a strong online reputation for goldsmith and tableware products.

The disputed domain name was registered on 18 January 2022 and redirects to an online shop related to the Complainant's products.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the CHRISTOFLE Trademark, because the mere addition of the generic term "SALE" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's mark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with nor authorised by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorisation has been granted by the Complainant to the Respondent to make any use of the CHRISTOFLE Trademark or apply for registration of the disputed domain name.

The Respondent is using the disputed domain name to publish a website, which reproduces the CHRISTOFLE Trademark and copyrighted images, and purports to offer for sale the Complainant's products. This suggests that the Respondent is using the disputed domain name to mislead Internet users by creating an affiliation with the Complainant.

Finally, the Complainant contends that the registration of the disputed domain name that incorporates the Complainant's well-known trademark suggests opportunistic bad faith. In registering and using the disputed domain name that incorporates the Complainant's trade mark and including the term "SALE", the Respondent is seeking to create an impression that its website is the Complainant's official website targeted at consumers. Irrespective of whether the goods offered on the Respondent's website are in fact counterfeit, the reproduction of the Complainant's trademark and copyrighted images on the Respondent's website without also displaying a clear disclaimer of a lack of relationship between the Respondent and the Complainant is indicative of bad faith.

The Complainant affirms that the Respondent's purpose of registering the disputed domain name was to trade on the reputation of the Complainant and its trademark by diverting Internet users seeking the Complainant's products to its own website for financial gain.

For the above-mentioned reasons, the Complainant requests the transfer of the disputed domain name.

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

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

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S TRADEMARK

In assessing identity or confusing similarity the Panel finds that the disputed domain name is confusingly similar to the Complainant's CHRISTOFLE Trademark, because it incorporates the entirety or at least the distinctive part of such mark and differs from it by merely adding the generic and descriptive term "SALE" and the TLD .COM.

In UDRP cases where the relevant trademark is recognisable within the disputed domain name, panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see paragraph 1.7 of WIPO Overview 3.0).

UDRP panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration (see paragraph 1.11.1 of WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that a complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to that respondent (see paragraph 2.1 of the WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the

burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the CHRISTOFLE Trademark or to register the disputed domain name.

The disputed domain name was registered on 18 January 2022 by NanShuang Ning, an individual located in China. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

Moreover, the disputed domain name resolves to an e-commerce site related to the Complainant's products, displaying its trademark and copyrighted images.

Under the so-called Oki Data test developed by past UDRP panels, the use of a domain name identical or similar to a trademark and used for the purpose of selling the trademark owner's goods or services may grant rights or legitimate interests in a domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, and paragraph 2.8 of the WIPO Overview 3.0).

In the present case, the Panel finds that the Respondent fails to meet the Oki Data cumulative requirements ((i) the respondent must actually be offering the goods or services at issue; (ii) the respondent must use the site to sell only the trademarked goods or services; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark), since the Panel is unable to locate any disclaimer regarding the relationship between the Respondent and the Complainant.

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services. As per the evidence on record, it is apparent that the Respondent not only did not have any right or legitimate interest in the disputed domain name, but was instead trading off the Complainant's reputation and goodwill, impersonating the Complainant and misleading the Internet users.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the CHRISTOFLE Trademark since 1950.

The Respondent registered the disputed domain name, incorporating in its entirety the dominant and distinctive element of the Complainant's prior mark (namely the wording CHRISTOFLE). The addition of the generic and descriptive term "SALE" and the TLD .COM (a technical requirement of the registration) is not only insufficient to escape the finding of identity or confusing similarity between the disputed domain name and the Complainant's mark, and, together with the website content, even enhances the risk of confusion.

Indeed, the domain name resolves to an e-commerce site related to the products of the Complainant, displaying its trademark and copyrighted images. Thus, it is clear that the Respondent registered and has used the disputed domain name with actual knowledge of the Complainant, its business and its mark and the intention to exploit the reputation and the goodwill built by the Complainant by diverting traffic away from the Complainant's website.

Therefore, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the Policy).

Taken into account all circumstances of this case, the Panel finds that it is implausible that there is any legitimate purpose in the registration and use of the disputed domain name by the Respondent.

The Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CHRISTOFLESALE.COM**: Transferred
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PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION 2022-03-06

Publish the Decision
