

Decision for dispute CAC-UDRP-104489

Case number	CAC-UDRP-104489
-------------	------------------------

Time of filing	2022-04-20 09:26:45
----------------	----------------------------

Domain names	lovehoney.design, lovehoney.ink, lovehoney.club
--------------	--

Case administrator

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

Complainant

Organization	Lovehoney Group Limited
--------------	--------------------------------

Complainant representative

Organization	BRANDIT GmbH
--------------	---------------------

Respondent

Organization	Wu Ze Xin
--------------	------------------

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- US trade mark registration no. 3350209, registered on 11 December 2007, for the word mark LOVEHONEY, in classes 3, 5, 10, 25, 28 and 35 of the Nice Classification;
- International trade mark registration no. 1091529, registered on 27 June 2011, designating Australia, Switzerland, China, Iceland, Japan, Norway, New Zealand, Russian Federation and Singapore, for the word mark LOVEHONEY, in classes 3, 5, 10, 25, 28 and 35 of the Nice Classification;
- EU trade mark registration no. 003400298, registered on 17 January 2005, for the word mark LOVEHONEY, in classes 3, 5, 10, 25, 28 and 35 of the Nice Classification;
- China trade mark registration no. 29693111, registered on 28 January 2020, for the work mark LOVEHONEY, in class 10 of the Nice Classification; and

- China trade mark registration no. 27012901, registered on 7 October 2019, for the figurative mark LOVEHONEY, in class 10 of the Nice Classification.

(hereinafter, collectively or individually, “the Complainant’s trade mark”; “the Complainant’s trade mark LOVEHONEY”; or “the trade mark LOVEHONEY” interchangeably).

FACTUAL BACKGROUND

The Complainant’s contentions can be summarised as follows:

A. Background history

The Complainant was founded in 2002 and is the largest British company selling sex toys, lingerie and erotic gifts on the Internet trading 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, which the Complainant commercialises in 46 countries across Europe, North America and Australasia.

The Complainant enjoys a strong online presence via its official websites and social media channels, namely <lovehoney.com>; <lovehoney.eu>; <lovehoneygroup.com>; and <lovehoney.co.uk>.

In addition to the non-exhaustive list of trade marks mentioned in the above section “Identification of rights”, the Complainant informs that it is also the owner of numerous domain names which contain the term “LOVEHONEY”, including <lovehoney.com>, which was registered in 1998.

By way of relief, the Complainant seeks the transfer of the disputed domain names <lovehoney.design>, <lovehoney.ink>, and <lovehoney.club> to the Complainant (“the disputed domain names”) on the grounds advanced in section B below.

B. Legal grounds

I. The disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain names <lovehoney.design>, <lovehoney.ink>, and <lovehoney.club> are identical to the Complainant’s trade mark LOVEHONEY; and that the generic Top-Level Domains (“gTLDs”) <.design>, <.ink>, and <.club> should be disregarded in the assessment of this Policy ground given that a TLD is a domain name’s standard registration requirement.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Complainant avers that the disputed domain names were registered on 31 December 2021, many years after the registration of the Complainant’s trade mark LOVEHONEY, and that they resolve to inactive webpages (“the Respondent’s websites”).

The Complainant further avers that the Respondent has never been given any right or license to use the trade mark LOVEHONEY, nor is the Respondent affiliated to the Complainant in any form or have the Respondent or the Respondent’s websites been endorsed or sponsored by the Complainant.

Moreover, the Respondent is not known by the disputed domain names, nor does the Respondent own any corresponding registered trade mark including the terms “lovehoney.design”, “lovehoney.ink”, “lovehoney.club” or the Respondent’s organisation “Wu Zen Xin”. The Complainant therefore contends that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain names, nor is the Respondent using the disputed domain names for legitimate non-commercial or fair use.

In order to further support the Complainant’s assertions under this Policy ground, the Complainant draws the Panel’s attention to

paragraphs 2.5.1 and 3.3 of the WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”).

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain names.

III. The Respondent registered and is using the disputed domain names in bad faith

Registration

The Complainant states that it is inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the disputed domain names. The Complainant further states that it is very likely that the Respondent registered the disputed domain names in order to take advantage of both the trade mark LOVEHONEY’s reputation and the Complainant’s goodwill.

Use

The Complainant contends that the disputed domain names are being held passively, and that the Respondent has intentionally used the disputed domain names to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites (paragraph 4(b)(iv) of the UDRP Policy).

In order to further support the Complainant’s assertions under this Policy ground, the Complainant draws the Panel’s attention to paragraphs 3.1.4 and 3.3 of the WIPO Jurisprudential Overview 3.0.

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the Respondent’s failure to respond to the Complainant’s cease-and-desist letter.

Lastly, the Complainant informs that, by conducting a reverse Whois records with the email address of the Respondent, the Complainant has found multiple domain names registered by the Respondent, and some of which corresponding to well-known trade marks of individual brand owners. This would constitute a pattern of conduct of abusive domain name registration on the Respondent’s part.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain names in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trade 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 matter – Language of Proceeding

A. The Complainant's request

On the matter of the language of the proceedings, the Panel notes as follows:

- The Complainant submitted its Complaint in English and made a pre-emptive request that English be the language of the proceedings;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain names is Chinese; and
- The Complainant's grounds for English to be the language of the proceedings can be summarised as follows: (i) the second-level portion of the disputed domain names are composed of the English words "love" and "honey", as well as the choice of the English language gTLDs <.design>, <.ink>, and <.club>, prove that the Respondent understands the English language and aims to target English speaking Internet users; (ii) the Complainant is a UK based company whereas the Respondent appears to be located in China. Therefore, the English language, being commonly used internationally, would be considered as neutral for both Parties in the present case; and (iv) a translation of the Complaint would entail significant additional costs for the Complainant and would delay the proceedings.

B. The Panel's determination

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the proceedings. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel accepts that English is the only identifiable language in the disputed domain name string;
- (ii) the content of the Respondent's website: this factor carries no weight in the Panel's determination of the language of the proceedings given that the disputed domain names do not resolve to active webpages, nor do they appear to have ever had any content;
- (iii) the language(s) of the Parties: the Complainant is originally from the UK and the Respondent appears to reside in China. Neither English nor Chinese would be considered neutral for both Parties. Consequently, this factor is immaterial to the Panel's determination on this occasion;
- (iv) the Respondent's behaviour (pre-dispute and in the course of the proceedings): the Panel notes that the Respondent has shown no inclination to participate in the proceedings; the Respondent did not respond to the Complainant's cease-and-desist letter, nor did it file a Response;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and
- (vi) the balance of convenience: while determining the language of proceedings, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of proceedings – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not least given the Respondent's default and overall disinterest pre- and throughout the proceedings. The determination of Chinese as the language of proceedings, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the

overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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 UDRP threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain names:

- i. The disputed domain names are 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 respect of the disputed domain names; and
- iii. The disputed domain names have been registered and are being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three Policy elements.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in "LOVEHONEY" since 2005.

The disputed domain names are <lovehoney.design>, <lovehoney.ink>, and <lovehoney.club>, and the Complainant's trade mark is LOVEHONEY.

The Panel has no difficulty in finding that the disputed domain names are identical to the Complainant's trade mark LOVEHONEY, in accordance with paragraph 4(a)(i) of the UDRP Policy.

The gTLDs, in this case <.design>, <.ink>, and <.club>, are typically disregarded by UDRP panels under this Policy ground ((see WIPO Jurisprudential Overview 3.0, paragraph 1.11).

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation/endorsement/sponsorship for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain names; that the Respondent does not hold any trade mark rights in the terms

“lovehoney.design”, “lovehoney.ink”, “lovehoney.club” or the Respondent’s organisation “Wu Zen Xin”; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names.

The Respondent has submitted no evidence to refute any of the Complainant’s assertions.

On balance, the Panel considers the available evidence to lend credence to the Complainant’s contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain names were registered in bad faith:

- The Complainant has been in operation since at least 2005, and has trade marks rights and a presence in China, where the Respondent appears to reside;
- The Complainant operates its activities through various domain names which contain the term “LOVEHONEY”, in particular <lovehoney.com>, which was registered in 1998;
- The disputed domain names <lovehoney.design>, <lovehoney.ink>, and <lovehoney.club> were all registered in 2021, and are identical to the Complainant’s trade mark LOVEHONEY;
- UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant’s trade mark is widely known in its field of business;
- The Respondent’s lack of participation in the course of these UDRP proceedings and at the pre-dispute stage (cease-and-desist letter); and
- The Respondent appears to have been engaged in a pattern of conduct of trade mark-abusive domain name registration within the meaning of the Policy (see paragraph 3.1.2 of the WIPO Jurisprudential Overview 3.0).

Use

The Complainant refers to the Respondent as being engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

“(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.”

At the time of writing, the disputed domain names do not resolve to active webpages.

The Panel has consulted paragraph 3.1.4 (circumstances (iv) above) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0 to form the Panel’s view on the use of the disputed domain names under this Policy ground. In the Panel’s assessment, the factors which attach weight to the Complainant’s case are (i) the actual confusion between the disputed domain names and the Complainant’s trade mark LOVEHONEY; (ii) the lack of the Respondent’s own rights to, or legitimate interests in, the disputed domain names; (iii) the failure of the Respondent to present a credible-backed rationale for

registering the disputed domain names; and (iv) the absence of any conceivable good faith use of the disputed domain names.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **LOVEHONEY.DESIGN**: Transferred
- 2. **LOVEHONEY.INK**: Transferred
- 3. **LOVEHONEY.CLUB**: Transferred

PANELLISTS

Name	Yana Zhou
------	-----------

DATE OF PANEL DECISION	2022-05-20
------------------------	------------

Publish the Decision