

Decision for dispute CAC-UDRP-104606

Case number **CAC-UDRP-104606**

Time of filing **2022-05-26 09:29:33**

Domain names **lovehoneyjobs.com**

Case administrator

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

Complainant

Organization **Lovehoney Group Limited**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **Zacquavion Hillman**

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 is the owner of several registered trademarks in respect of the mark LOVEHONEY including for example:

- International Registered Trademark no. 1091529 for the word mark LOVEHONEY, registered on June 27, 2011 in Classes 3, 5, 10, 25, 28 and 35, and designated in respect of 9 territories; and

- European Union Registered Trademark no. 3400298 for the word mark LOVEHONEY, registered on January 17, 2005 in Classes 3, 5, 10, 25, 28 and 35.

FACTUAL BACKGROUND

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

Founded in 2002, the Complainant is the largest British company selling sex toys, lingerie and erotic gifts on the Internet, with over 400 own brand products and exclusive licenses to design, manufacture and sell featured adult products. It has 300 employees, and it and its products have received numerous awards including the Best Customer Service Award for online

retailers at the eCommerce Awards for Excellence, the Queen's Award for Enterprise in International Trade (2021), Best Online Retailer (2020), and International Pleasure Products Company of The Year (2020). The Complainant sells products to 46 countries in Europe, North America and Australasia through nine websites. The Complainant has 43,749 followers on Facebook, 154,000 followers on Instagram, and 57,500 followers on Twitter.

The Complainant is the owner of the LOVEHONEY registered trademark. The Complainant is also the owner of multiple domain names bearing this mark, including for example, <lovehoney.com> (created on December 1, 1998), <lovehoneygroup.com> (created on March 14, 2012), <lovehoney.co.uk> (created on December 5, 2001), and <lovehoney.ca> (created on September 9, 2008).

The Respondent registered the disputed domain name on March 14, 2022. It resolves to an active page displaying Pay Per Click links, such as: "Paid Typing Jobs", "Target jobs near me", "Social Service Worker Jobs" and others.

The disputed domain name incorporates, in its second-level portion, the Complainant's LOVEHONEY trademark in its entirety along with the common term "jobs" which is closely relevant to the Complainant's business and may refer to career opportunities in the Complainant's company. Said LOVEHONEY trademark is clearly recognizable in the disputed domain name. Previous UDRP panels have constantly held that the mere addition of a descriptive term would not prevent a finding of confusing similarity to a trademark. The generic Top-Level Domain ".com" is a standard registration requirement and should be disregarded when assessing whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The disputed domain name is therefore confusingly similar to the Complainant's LOVEHONEY trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never granted any right or license to use the LOVEHONEY trademark to the Respondent including within the disputed domain name, nor is the Respondent affiliated to the Complainant in any form, nor has the Complainant endorsed or sponsored the Respondent or the Respondent's website. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademark including the terms "lovehoneyjobs.com" or "lovehoneyjobs". When searching for the term "lovehoney", "lovehoney jobs" or "lovehoneyjobs.com" in popular Internet search engines like Google.com, the vast majority of the results relate to the Complainant's official websites or websites directly referring to the Complainant and career opportunities at the Complainant. When searching for the name of the Respondent along with the terms of the disputed domain name no results are returned showing that the Respondent is known by the disputed domain name.

At the time of filing of the Complaint, the disputed domain name resolved to an active page displaying Pay Per Click links such as: "Target Jobs Near Me", "Apply for Dispatcher Jobs", "Social Service Worker Jobs", and "Paid Typing Jobs". The screenshot history shows that on March 15, 2022, the day after registration of the disputed domain name, it resolved to an active Pay Per Click Page displaying links such as: "Lovehoney careers", "Real Estate", "Vacation Packages" and others. Thus, some of the links were directly referring to the Complainant's job opportunities.

Panels under the Policy agree that using a domain name to host a Pay Per Click website does not present a bona fide offering of goods or services where such links compete with or capitalize on the reputation and goodwill of a complainant's trademark. Previous panels have held that such parking pages built around a trademark neither constitute such a bona fide offering nor a legitimate noncommercial or fair use under the Policy. The Respondent is using a privacy shield and is most likely aiming at hiding its identity rather than being known by the disputed domain name.

The Complainant tried to reach the Respondent by sending a cease-and-desist letter on April 26, 2022 to the privacy e-mail address available on the WHOIS record. The Complainant also tried to reach out to the Respondent by sending an on-line form as provided by the Registrar for contacting registrants. The Complainant further sent a reminder to its cease-and-desist letter. The Respondent did not reply but has been granted several opportunities to present compelling arguments that it has rights or legitimate interests, yet has failed to do so.

The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name many years after the first registration of the Complainant's LOVEHONEY trademark. The disputed domain name

incorporates the Complainant's mark in its entirety along with the common noun "jobs". By conducting a simple online search regarding the term "lovehoney", "lovehoney jobs", or "lovehoneyjobs.com," the Respondent would have been aware of the Complainant and its mark. In the most popular search engines, the Complainant's website or social media accounts or related topics will appear as the top results including results related to job opportunities at the Complainant's company. In such circumstances, the Respondent would have learned about the Complainant, its mark and activities. The Complainant is very active on social media (Facebook, Instagram and Twitter) to promote its mark, products and services, and its LOVEHONEY trademark is easily recognized by consumers around the world.

Thus, it is inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the disputed domain name. On the contrary, it is very likely that the Respondent registered the disputed domain name incorporating the LOVEHONEY trademark intentionally in order to take advantage of reputation of the trademark and the Complainant's goodwill. Therefore, the Respondent knew the Complainant's trademark at the time it registered the disputed domain name and registered it in bad faith.

The use of the disputed domain name creates a likelihood of confusion in Internet users' minds and may lead them to click on sponsored links displayed on the PPC page, an action which generates revenue for the Respondent. Where such links are based on trademark value, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion. Such 'freeriding' on the reputation of Complainant and its trademark is indicative of Respondent's bad faith use of the disputed domain name.

The Complainant tried to contact the Respondent in April 2022 through a cease-and-desist letter. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of its trademark within the disputed domain name violated its trademark rights and the Complainant requested a voluntary transfer of the disputed domain name. The Respondent chose not to reply to the cease-and-desist letter sent by the Complainant which indicates bad faith. In view of the above, the Complainant registered and used the disputed domain name 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 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The second level of the disputed domain name contains the Complainant's trademark in its entirety, followed by the noun "jobs". The Complainant's trademark is completely recognizable within the disputed domain name, and the addition of the term "jobs" does not prevent a finding of confusing similarity under the first element of the Policy. The generic Top-Level Domain, in this case ".com", is typically disregarded for the purposes of the comparison exercise under the Policy. In these circumstances, the

Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Complainant asserts that it has never granted the Respondent any right or license to use the LOVEHONEY trademark including within the disputed domain name, that the Respondent is not affiliated to the Complainant in any form, that the Complainant has not endorsed or sponsored the Respondent or the Respondent's website, and that there is no evidence that the Respondent is commonly known by the disputed domain name or owns any corresponding registered trademark. The Complainant illustrates the fact that the vast majority of Internet searches for the term comprised in the disputed domain name relate to the Complainant's own websites, in many cases referring to job opportunities with the Complainant.

The disputed domain name has been used in connection with pay per click advertising which appears to the Panel to rely upon the notoriety of the Complainant and its trademark, and which has even, on occasion, directly referenced the Complainant's business. The Panel accepts the Complainant's assertion that such use is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use within the meaning of the Policy. This use of the disputed domain name cannot confer any rights or legitimate interests upon the Respondent in the Panel's opinion.

The Respondent has not filed a Response in this case. Accordingly, it has not taken the opportunity to set out any alleged rights or legitimate interests in the disputed domain name. It did not respond to the Complainant's cease and desist letter. There are no submissions or evidence on the record which might serve to rebut the Complainant's prima facie case. In all of the above circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has established that the disputed domain name has been registered and is being used in bad faith. The Complainant has made out a persuasive case that its use of the LOVEHONEY trademark is widely known among consumers, including in the location in which the Respondent is apparently based, not least because of the Complainant's award-winning products and engagement with multiple markets globally, its active social media presence, and its prominence in corresponding search engine results. Thus, it is reasonable to infer that the Respondent knew of the Complainant and its trademark when it registered the disputed domain name.

The disputed domain name contains three elements, namely, "love", "honey" and "jobs," without separators such as hyphens. As these are each dictionary words, there is a theoretical possibility that the phrase "love honey" might have been chosen to suggest a lover of that particular food rather than being a reference to the Complainant's mark. However, such a connotation would not make sense when coupled with the word "jobs". This combination is much more suggestive of an employer operating under the name or mark LOVEHONEY, i.e. the Complainant. Given the use of the disputed domain name in connection with pay per click links which have, on occasion, specifically referenced the Complainant, the Panel considers that it is more probable than not that the Respondent registered the disputed domain name in full knowledge of the Complainant's rights and with intent to target these via the pay-per-click advertising concerned, knowing that the notoriety of the Complainant's mark would maximize the traffic to its website, and that the use of the term "jobs" together with such mark would also maximize the Respondent's click-through revenue. In these circumstances, a finding of registration and use in bad faith is warranted, on the basis of paragraph 4(b)(iv) of the Policy, given that 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 its website.

The Respondent has not replied to the Complainant's allegations of bad faith registration and use, nor has it advanced any explanation which might indicate that its actions regarding the disputed domain name were in good faith. In the absence of such, the Panel has not identified any likely or reasonable explanation based upon the present record which the Respondent might have tendered, relative to its registration and use of the disputed domain name, which would have avoided a finding of registration and use in bad faith in accordance with the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LOVEHONEYJOBS.COM: Transferred

PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION	2022-06-23
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Publish the Decision
