

Decision for dispute CAC-UDRP-104605

Case number CAC-UDRP-104605

Time of filing 2022-05-24 09:42:58

Domain names lovehoneyworld.com

Case administrator

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

Complainant

Organization Lovehoney Group Limited

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Ricardo Lin

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 registered owner of several trademark registrations for the term LOVEHONEY, e.g. International registration no. 1091529 registered on June 27, 2011 and designating several countries worldwide amongst others China.

FACTUAL BACKGROUND

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

It results from the Complainant's undisputed allegations that it was founded in 2002 and is a company selling sex toys, lingerie and erotic gifts on the Internet. It has over 400 own brand products and exclusive licenses to design, manufacture and sell featured adult pleasure products. It employs around 300 people and sells products to 46 countries in Europe, North America and Australasia through nine web-sites. The Complainant enjoys a strong online presence via its official websites and social medias.

Moreover, the Complainant owns many domain names containing the term "LOVEHONEY", amongst others the domain names <lovehoney.com> (registered on December 1, 1998), <lovehoneygroup.com> (registered on March 14, 2012) which

resolve to its official websites through which it informs potential customers about its LOVEHONEY mark and its products and services.

The disputed domain name <lovehoneyworld.com> was created on April 2, 2022 and resolves to an inactive page.

Finally, the Complainant sent a cease-and-desist letter to the Respondent on April 26, 2022, to the e-mail address as available in WHOIS records, informing of the infringement of its trademark rights and asking for the transfer of the disputed domain name. The Respondent did not reply.

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 UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

First of all, the gTLD "com" of the disputed domain name has to be disregarded under the first element confusing similarity test, since it is a standard registration requirement (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.11).

It results from the evidence provided that the Complainant is the registered owner of several trademark registrations for the term "LOVEHONEY", e.g. International registration no. 1091529 registered on June 27, 2011 and designating several countries worldwide amongst others China.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety, see WIPO Overview 3.0 at section 1.7.

This is the case in the case at issue where the Complainant's registered trademark "LOVEHONEY" is fully included in the disputed domain name followed by the generic and descriptive term "world". The Complainant's trademark is clearly recognizable within the disputed domain name and the addition of the generic and descriptive term does not prevent a finding of confusing similarity, see WIPO Overview 3.0 at section 1.8.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark LOVEHONEY, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, no content is displayed on the website to which the disputed domain name resolves. This Panel finds that such use can neither be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraphs 4(c)(i) and (iii) of the Policy (see, e.g., Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello, WIPO Case No. D2020-1955; KOC Holding A.S. v. VistaPrint Technologies Ltd, WIPO Case No. D2015-1910). Moreover, the Panel notes that the disputed domain name is clearly constituted by the Complainant's registered trademark LOVEHONEY and the generic and descriptive term "world", tending to suggest sponsorship or endorsement by the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Complainant has put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

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

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

Based on the evidence submitted by the Complainant, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name comprises entirely the Complainant's registered trademark LOVEHONEY. Registration of the disputed domain name in awareness of the LOVEHONEY mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the current passive holding does not preclude a finding of bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Respondent failed to

submit a formal response or to provide any evidence of actual or contemplated good-faith use; (2) the Respondent failed to reply to the cease and desist letter sent by the Complainant before the commencement of this proceeding); (3) the Respondent used a privacy service hiding its identity; and (4) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0 at section 3.3).

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LOVEHONEYWORLD.COM: Transferred

PANELLISTS

Name	Dr. Federica Togo
-------------	--------------------------

DATE OF PANEL DECISION **2022-07-06**

Publish the Decision
