

Decision for dispute CAC-UDRP-104611

Case number CAC-UDRP-104611

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Domain names sexlovehoney.com

Case administrator

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

Complainant

Organization Lovehoney Group Limited

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Julisof JuliBup

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 a number of trade marks for LOVEHONEY including, by way of example, European Union Trade Mark, registration, number 003400298, in classes 3, 5, 10, 25, 28 and 35, registered on January 17, 2005.

FACTUAL BACKGROUND

The Complainant is a company founded in 2002, with its headquarters in Bath, United Kingdom. It is a manufacturer, distributor and retailer of sex toys, lingerie and erotic gifts and sells its products into 46 countries, located in Europe, North America and Australasia. The Complainant trades as LOVEHONEY and, in addition to its trade marks for LOVEHONEY, it owns domain names which comprise this term, including <lovehoney.com>, <lovehoney.co.uk> and <lovehoney.eu>.

The disputed domain name was registered on January 19, 2022. It has previously resolved to differing websites including a website purportedly selling sex toys and a partially completed website relating to fashion items and containing lorem ipsum text. It does not presently resolve to an active website.

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. It contains the

Complainant's LOVEHONEY trade mark in its entirety, preceded by the word "sex". This additional word is referable to the Complainant's products and, in these circumstances, does not prevent a finding of confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name has previously resolved a number of different websites including a website offering sex toys for sale and another website comprising a "coming soon" webpage. None of these uses comprise a bona fide offering of goods and services nor a legitimate, noncommercial or fair use of the disputed domain name. The Complainant has not granted any licence or right to the Respondent to use its LOVEHONEY trade mark, nor is the Respondent affiliated to the Complainant in any way, nor is there any evidence to suggest that the Respondent is known by the disputed domain name.

The Respondent has registered and is using the disputed domain name in bad faith. A simple online search would have revealed the Complainant's use of LOVEHONEY. In view of the repute of its mark, it is inconceivable that the Respondent was unaware of the Complainant as at the date of its registration of the disputed domain name and it is very likely that it was registered by the Respondent in order to take advantage of the repute of the Complainant's mark. In particular, 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 the source, sponsorship or endorsement of its website. Furthermore, use of the disputed domain name to resolve to a website which offered for sale goods which compete with those of the Complainant comprises bad faith use. Finally, use by the Respondent of a privacy shield to hide its identity is, in the circumstances of this Complaint, a further indicator of 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 UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

(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 in bad faith.

Rights

The Panel finds that the disputed domain name is confusingly similar to the Complainant's LOVEHONEY trade mark. The disputed domain name contains the Complainant's LOVEHONEY mark in full, preceded by the word "sex". Where a complainant's mark is recognizable within a domain name, the addition of other terms, irrespective of their meaning, will not prevent a finding of confusing similarity; see CAC Case No. 102382, MAJE v enchong lin.

Rights and legitimate interests

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a genuine offering of goods and services or has made demonstrable preparations to do so; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The previous use by the Respondent of the disputed domain name in order to resolve to a website offering for sale goods which compete with those of the Complainant does not amount to a bona fide offering of goods; see CAC Case No. 100379, DORNA WSBK ORGANIZATION S.R. v . paginas Acapulco.

The fact that the disputed domain name does not presently resolve to an active website means that it is not being used in connection with a bona fide offering of goods and services. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's passive holding of the domain name amount to making a legitimate, noncommercial or fair use of it.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The fact that, shortly after registration, the disputed domain name resolved to a website which offered for sale products which competed with those of the Complainant means that it is highly probable that the Respondent registered the disputed domain name with an awareness of the Complainant and its LOVEHONEY mark and business and that it was registered in order to take unfair advantage of that mark. Registration in these circumstances is in bad faith.

The previous use of the disputed domain name in order to resolve to a website selling sex toys falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy in that the Respondent had 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 the source, sponsorship or endorsement of its website. See, for example; BOEHRINGER INGELHEIM INTERNATIONAL GMBH v Albert Sadykov, CAC Case No. 101293.

The present inactive status of the disputed domain name does not prevent a finding of bad faith use under the doctrine of passive holding and the principles set out initially in the decision of Telstra Corporation Limited v. Nuclear Marshmallows,

WIPO Case No. D2000-0003. See also Intesa Sanpaolo S.p.A. v Leone Toscano, CAC Case No. 103819. Factors which are typically considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

Applying these facts to the current circumstances, the Complainant has established that its mark is well-known. Additionally, the Respondent has not submitted a response or provided any evidence of good faith use and it has sought to conceal its identity. Finally, it is not possible to conceive of any plausible good faith use to which the disputed domain name could be put by the Respondent. Accordingly, the inactive status of the disputed domain name comprises bad faith use under the doctrine of passive holding.

The Panel therefore finds that the disputed domain name was both registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SEXLOVEHONEY.COM**: Transferred

PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2022-07-07

Publish the Decision