

Decision for dispute CAC-UDRP-104672

Case number	CAC-UDRP-104672
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Time of filing	2022-07-01 09:53:33
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Domain names	lovehoney.today
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Case administrator

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

Organization	Lovehoney Group Limited
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Name	Tammie Paine
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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 owns trademark registrations for LOVEHONEY registered in different classes of Nice Classification (thereafter the "Complainant's trademarks"), such as but not limited to:

- US trademark registration No. 3350209 LOVEHONEY, registered on December 11, 2007;
- International trademark registration No. 1091529 LOVEHONEY, registered on June 27, 2011 designating Australia, Switzerland, China, Iceland, Japan, Norway, New Zealand, Russian Federation and Singapore;
- EU trademark registration No. 003400298 LOVEHONEY, registered on January 17, 2005;
- China trademark registration No. 2969311 LOVEHONEY, registered on January 28, 2020; and
- China trademark registration No. 27012901 LOVEHONEY (figurative), registered on October 7, 2019.

Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "LOVEHONEY", for example, <lovehoney.com> (created on December 1, 1998), <lovehoneygroup.com> (created on March 14, 2012) <lovehoney.co.uk> (created on April 30, 2006), <lovehoney.ca> (created on September 9, 2008) and others. Complainant uses these domain names to connect to websites through which it informs potential customers about its LOVEHONEY mark and its products and services:

lovehoney.com <https://www.lovehoney.com/>

lovehoney.eu <https://www.lovehoney.eu/>

lovehoneygroup.com <https://www.lovehoneygroup.com/>

lovehoney.co.uk <https://www.lovehoney.co.uk/>

FACTUAL BACKGROUND

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

The Complainant, LOVEHONEY Group Limited (hereinafter "Lovehoney" or "the Complainant") is the owner of the LOVEHONEY trademarks.

Founded in 2002, Lovehoney is the largest British company selling sex toys, lingerie and erotic gifts on the Internet continuing to grow rapidly across the world as a retailer, manufacturer and distributor. Lovehoney has over 400 own brand products and exclusive licences to design, manufacture and sell featured adult pleasure products. Lovehoney employs around 300 people and their headquarters are open seven days a week selling products to 46 countries in Europe, North America and Australasia through nine web-sites. Lovehoney focuses on exceptional customer service, product innovation, website usability and creative marketing to always be at the forefront of developments in sexual wellbeing and ecommerce.

Lovehoney's company, website and the products the company sells have received numerous awards (<https://www.lovehoney.co.uk/> including the Best Customer Service Award for online retailers at the eCommerce Awards for Excellence, Queen's Award for Enterprise in International Trade (2021), Best Online Retailer (2020), International Pleasure Products Company of The Year (2020) and many other. Lovehoney is also rated as 'Excellent' in over 80,000 customer reviews on Trustpilot, the renown independent review website.

The Complainant also enjoys a strong online presence via its official websites and social medias. Due to extensive use and advertising, Lovehoney's on-line shops are easily recognized by the consumers.

The Disputed Domain Name was registered on March 7, 2022.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

In accordance with Paragraph 4(a)(i) of the Uniform Dispute Resolution Policy (the "Policy"), in an administrative proceeding the complainant must prove that (i) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no right or legitimate interests in respect of the Domain Name, and (iii) the Domain Name has been registered and is being used in bad faith.

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has

rights

As mentioned earlier Complainant owns trademark registrations for LOVEHONEY registered in different countries of the world.

The Disputed Domain Name incorporates, in its second-level portion, the Complainant's trademark LOVEHONEY in its entirety and, in its first-level portion, the generic Top-Level Domain ("gTLD") ".today". Such generic Top-Level Domains is a standard registration requirement and should be disregarded when assessing whether a disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see, *Sanofi v. Francisco Sánchez Fernández*, *insurious*, WIPO Case No. D2019-0169; *Bugatti International S.A. v. Ruanxiaojiao*, WIPO Case No. D2017-2555).

The Disputed Domain Name is therefore identical to the Complainant's trademarks LOVEHONEY.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Disputed Domain Name was registered on March 7, 2022, many years after the registration of the Complainant's LOVEHONEY trademarks.

The Complainant has never granted the Respondent any right or license to use LOVEHONEY trademark within the Disputed Domain Name or otherwise, nor is the Respondent affiliated to the Complainant in any form. The Complainant has not endorsed or sponsored the Respondent or the Respondent's websites.

It has been mentioned in earlier WIPO decisions that the domain names identical to third parties' trademarks create a very high risk of association with the trademark owner. Namely, WIPO Case No. D2016-1698 *Eli Lilly and Company and Novartis Tiergesundheit AG v. Manny Ghuman/Mr.NYOB/Jesse Padilla* where the Panel stated the following: Generally speaking, UDRP panels have found that domain names identical to a third-party trademark carry a high risk of such affiliation. Where the domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP jurisprudence broadly holds that this cannot constitute nominative fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The same is stated in Section 2.5.1 of "WIPO Jurisprudential Overview 3.0".

There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademarks including the terms "lovehoney.today".

When searching for the term "lovehoney" or "lovehoney.today" in popular Internet search engines like Google.com, the vast majority of the results relate to Complainant's official websites, Social Media account or otherwise referring to the Complainant and their products.

When conducting searches on online trademark databases, no information is found in relation to the trademarks corresponding to "lovehoney.today" trademarks nor information about any trademarks registered in the name of the Respondent - Tammie Paine is found.

When conducting search with the name of the Respondent "Tammie Paine" or their e-mail address <nbnas18@gmail.com> in combination with the terms of the Domain Name <lovehoney.today>, there are no returned results showing that the Respondent is known by the Disputed Domain Name.

The Respondent could easily perform a similar search before registering the Disputed Domain Name and would have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks worldwide as well as operating under the commercial name Lovehoney for a long time. The Respondent has not by virtue of the content of the website, nor by its use of the Disputed Domain Name shown that she has been commonly known by the Disputed Domain Name.

At the time of filing of the complaint the Disputed Domain Name resolved to a parked page at GoDaddy/Afternic displaying the message that the Disputed Domain Name is available for sale. From the Complainant's perspective, the Respondent is not

making a legitimate noncommercial or fair use the Disputed Domain Name nor is using the Disputed Domain Name in connection with a bona fide offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i).

There is no “evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name” (see *Bollore v. Tywonina W Hill*, WIPO Case No. DCO2017-0012). The Disputed Domain Name has therefore not been used in connection with a bona fide offering of goods and services.

However, at the time the Complainant found out about the Disputed Domain Name, it was redirecting to the web-site <www.nbnas.com.au> active page resolving to on-line shop offering for sale sex toys and other products for adults called “Naughty by Nature Adult Store”. Thus, products similar to those offered, manufactured and promoted by the Complainant.

Thus, the website was resolving to the website of the competitor of the Complainant. According to the “WIPO Jurisprudential Overview 3.0” para. 2.5.3: “a respondent’s use of a complainant’s mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests”.

Furthermore, the Complainant tried to reach the Respondent by sending cease and desist letter. Namely the Complainant sent Cease and Desist Letter regarding the domain name <lovehoney.today> on April 24, 2022 via the abuse contact of the Registrar and e-mail as displayed at the website where the Disputed Domain Name used to redirect - sales@nbnas.com.au.

Moreover, the Complainant also tried to reach the Respondent via on-line form available at the website of the Registrar.

The Respondent did not reply but has been granted several opportunities to present some compelling arguments that it has rights or legitimate interests in the Disputed Domain Name but has failed to do so. Moreover, the Respondent chose to stop redirection following receipt of the cease and desist letter.

The Respondent has therefore no rights or legitimate interests in respect of the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith

1) Registration of the Disputed Domain Name in bad faith

The Respondent registered the Disputed Domain Name many years after the first registration of the Complainant’s LOVEHONEY trademarks. The Respondent has chosen to incorporate the trademark LOVEHONEY in the Disputed Domain Name in its entirety.

By conducting a simple online search regarding the term “lovehoney” or “lovehoney.today”, 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 top first results. As previously stated by UDRP panels, in such circumstances, the Respondent would have learnt about the Complaint, its mark and activities (see *Intesa Sanpaolo S.p.A. v. Abayomi Ajileye*, CAC Case No. 102396) and “it is inconceivable that the Respondent was unaware of the existence of the Complainant when she registered the disputed domain name” (See, *Novartis AG v. Chenxinqi*, Case No. 101918). As mentioned, 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. The Complainant is followed by 43,749 people on Facebook, on Instagram the Complainant is followed by 154 thousand followers, Twitter account is also popular among consumers and followed by 57,5 thousand people. (See, *Laboratoires M&L v. Zhaoxingming*, CAC Case No. 102277).

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 trademark LOVEHONEY intentionally, to take advantage of reputation of the trademark and Complainant’s goodwill.

Therefore, the Respondent knew the Complainant's trademark at the time it registered the Disputed Domain Name and registered the Disputed Domain Name in bad faith.

2) Use of the Disputed Domain Name in bad faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which shall be evidence of the registration and use of a domain name in bad faith. Among those circumstances Paragraph 4(b)(iv) of the Policy reads: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

Firstly, the Disputed Domain Name contains the Complainant's trademark LOVEHONEY entirely.

UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (Section 2.5.1 of "WIPO Jurisprudential Overview 3.0").

"WIPO Jurisprudential Overview 3.0" section 3.1.4 states that "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

In addition, as previously mentioned, at the time the Complainant found out about the Disputed Domain Name, it was redirecting to the web-site <www.nbnas.com.au> active page resolving to on-line shop offering for sale sex toys and other products for adults called "Naughty by Nature Adult Store". Thus, products similar to those offered, manufactured and promoted by the Complainant. Thus, the website was resolving to the website of the competitor of the Complainant.

According to the "WIPO Jurisprudential Overview 3.0" para. 2.5.3: "a respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests".

At the time of filing of the complaint the Disputed Domain Name resolved to a parked page at Afternic/GoDaddy offering the domain name for sale). From the Complainant's perspective, the Respondent is not making a legitimate noncommercial or fair use the Disputed Domain Name nor is using the Disputed Domain Name in connection with a bona fide offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i).

There is no "evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name" (see *Bollore v. Tywonina W Hill*, WIPO Case No. DCO2017-0012). The Disputed Domain Name has therefore not been used in connection with a bona fide offering of goods and services.

Moreover, the Complainant tried to contact the Respondent on April 24, 2022 through a cease-and-desist letter. In the cease-and-desist letter sent via Registrar and to the e-mail address as displayed at the website where the Disputed Domain Name used to redirect, the Complainant advised the Respondent that the unauthorized use of their trademarks within the Disputed Domain Name violated their trademark rights and 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 infers bad faith (see *International Business Machines Corporation v. Adam Stevenson, Global Domain Services*, WIPO case No. D2016-1695; *Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo*, WIPO Case No. D2018-2201).

Furthermore, as mentioned earlier, it is likely that the Respondent stopped redirection following the receipt of the cease-and-desist letter.

In addition, according to the reverse WHOIS search by the name of the Respondent "Tammie Paine" it appears that the

Respondent holds numerous other domain names (27) that contain terms directly related to the business of the Complainant such as: <bondagesextoys.com.au>, <sexdollsinaustralia.com.au>, <femalesexdolls.com.au> and many others, including the domain name <nbnas.com.au> where the Disputed Domain used to redirect. This clearly shows the bad faith intention of the Respondent.

In view of the above, the Complainant registered and used the Disputed Domain Name in bad faith and its conduct falls within the meaning of Paragraph 4(a)(iii) of the Policy.

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 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

The Disputed Domain Name consists of the Complainant's LOVEHONEY mark and the gTLD ".today". gTLDs are typically disregarded when a comparison is made between a domain name and a mark as gTLDs are a necessary and functional part of a domain name.

The Respondent is not authorised by the Complainant and is not commonly known by the Disputed Domain Name. The Disputed Domain Name has been used to point to a competitor of the Complainant which does not show a bona fide offering of goods or services or a legitimate noncommercial or fair use. Offering a domain name for sale generally suggests a lack of legitimate interest in a domain name.

With regards to bad faith, use of a domain name containing the trademark of another to point to a competitor is causing confusion on the Internet for commercial gain and disrupts the business of the Complainant. The Respondent holds a number of domain names related to adult sex toys suggesting she is in the same business as the Complainant and therefore can be presumed on the balance of probabilities to have heard of the Complainant as a major player in the same field. Additionally, the Disputed Domain Name containing the Complainant's distinctive trade mark has been offered for sale for a sum in excess of registration costs which is also registration and bad faith under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOVEHONEY.TODAY:** Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION	2022-07-28
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Publish the Decision
