

Decision for dispute CAC-UDRP-105251

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| Case number | CAC-UDRP-105251 |
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| Time of filing | 2023-03-02 08:58:53 |
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| Domain names | corelleclearance.com |
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Case administrator

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

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| Organization | Instant Brands LLC |
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Complainant representative

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| Organization | Stobbs IP Ltd |
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Respondent

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| Name | Olivia Conti |
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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 is the owner of a number of trade marks for CORELLE including, by way of example only, United Kingdom trade mark, registration number 904259231, in class 21, registered on March 27, 2006.

FACTUAL BACKGROUND

The Complainant is a large International company which owns and operates a large number of brands. It uses its CORELLE brand in connection with the sale of dinnerware goods and related services.

The disputed domain name was registered on June 24, 2022. It resolves to a website, offering a variety of discounted dinnerware for sale.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The disputed domain name fully incorporates the Complainant's CORELLE mark together with the non-distinctive term "clearance". This does nothing to alter the overall impression of the disputed domain name in the eyes of the average Internet user.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no credible or realistic reason for the Respondent's registration of the disputed domain name other than to take advantage of the Complainant's rights and brand reputation. The Respondent is not therefore using the disputed domain name in connection with a *bona fide* offering of goods and services in that it is offering for sale, counterfeit and knockoff products which infringe the Complainant's intellectual property rights. The Respondent has not been commonly known by the disputed domain name, nor is it making a legitimate non-commercial or fair use of the disputed domain name in that it is using it in order to impersonate the Complainant.

Lastly, the Respondent has registered and is using the disputed domain name in bad faith. The Respondent was unequivocally aware of the Complainant's CORELLE brand given that its website is set up to impersonate/pass itself off as the Complainant in order to sell counterfeit product. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name evinces bad faith. The Complainant is using the disputed domain name in order to divert potential customers to its website, which comprises bad faith under paragraph 4(b)(iii) and (iv) 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 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

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

So far as the first element is concerned, the Complainant's trade mark registrations for CORELLE including the trade mark in respect of which full details are provided above, establish its rights in this mark.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the generic Top Level Domain, that is ".com" in the case of the disputed domain name, as this is a technical requirement of registration. The

remaining element of the disputed domain name comprises the Complainant's CORELLE trade mark, in full followed by the word "clearance". The Complainant's mark is clearly recognizable within the disputed domain name and the additional element does not serve to prevent the disputed domain name from being found confusingly similar to it. See, by way of example, CAC Case No. 103016, Novartis AG v unlocking guru; "An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion". The Panel accordingly finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (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 only known use of the disputed domain name, has been to enable the Respondent to sell, or purport to sell, dinnerware. It should be noted that the Respondent's website does not make use of the Complainant's CORELLE brand, nor is there any direct evidence that the dinnerware advertised for sale by the Respondent is counterfeit. However, the Respondent is plainly using the CORELLE component within the disputed domain name in order to lure Internet users to its website and such visitors will be predisposed to believe, as a result of the Respondent's use of the Complainant's mark, that at least some of the dinnerware advertised for sale on the Respondent's website is that of the Complainant. Moreover, the Respondent has not chosen to go on the record to deny the Complainant's allegations.

There is no evidence that the Respondent has been commonly known by the disputed domain names, and the use made of it is such that as not to 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 names.

Bad faith

The Panel accepts the Complainant's submission that, given the distinctive nature of the Complaint's CORELLE trade mark and the use to which it has been put following registration, it is highly improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights.

So far as bad faith use is concerned, the circumstances of the Respondent's registration and use of the disputed domain name falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy, namely that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site 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 its web site or other online location.

For these reasons the Panel finds that the disputed domain name was both registered and 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. **corellec Clearance.com**: Transferred

PANELLISTS

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| Name | Antony Gold |
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| DATE OF PANEL DECISION | 2023-04-05 |
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Publish the Decision
