

Decision for dispute CAC-UDRP-105248

Case number	CAC-UDRP-105248
Time of filing	2023-03-02 11:03:35
Domain names	corellekitchenware.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Instant Brands LLC
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Complainant representative

Organization	Stobbs IP Ltd
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Respondent

Name	Hai Ling Huang
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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

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The Complainant owns very extensive rights in the "CORELLE" mark including but not limited to the trademark registrations as follows:

Trade Mark	Register	Registration No.	Reg. Date.	Class
CORELLE	China	258707	09 August 1986	21
CORELLE	China	39201377	07 June 2020	35
CORELLE	Canada	TMA167153	02 January 1970	21
CORELLE	UK	UK00904259231	27 March 2006	21

The Complainant has an active online presence including owning the domain name <corelle.com> which is used as its main operating website, which has been live since at least as early as 9 November, 2000.

The Complainant is also active on social media – Facebook, Instagram, Pinterest, LinkedIn - and has generated a significant level of endorsement.

FACTUAL BACKGROUND

The “CORELLE” brand was launched in 1970, and since then the Complainant has built a significant reputation and has built up a vast amount of goodwill in the “CORELLE” trademark in the United Kingdom and abroad in relation to dinnerware goods and related services.

The terms covered by the Complainant’s registered trademarks include, but are not limited to, coverage for ‘dinnerware, namely, plates, saucers, bowls, cups, mugs, serving bowls and platters, salt and pepper shakers, sugar bowls and creamers; baking dishes, casserole dishes, serving dishes and pie plates; bakeware in a carrying case; kitchen serving utensils; namely, ladles, spoons, forks, turners, whisks, ice cream scoops, pie servers, hand cheese graters.’

The “CORELLE” brand has extensive reach offering its products and services worldwide. In 2019, Corelle Brands LLC merged with Instant Brands Inc, creating a company with an enterprise value of over \$2 billion.

The disputed domain name <corellekitchenware.com> was registered on 29 March, 2022.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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).

The Panel accepts that the Complainant has rights by reason of its ownership of the registered trademark “CORELLE”. The question is whether the disputed domain name is identical or confusingly similar to the Complainant’s trademark.

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark “CORELLE” as it incorporates the trademark verbatim.

Whether a disputed domain name is identical or confusingly similar to a trademark can be determined by making a side-by-side comparison with the disputed domain name. A disputed domain name is identical to the trademark when it is a character for character match. It is confusingly similar when it varies the trademark by, for example, adding generic terms to the dominant part of the trademark.

Here, the non-distinctive or generic term “kitchenware” is added after the trademark “CORELLE” to form the disputed domain name. Adding a non-distinctive term does not alter the overall impression in the eyes of internet consumers and does not avoid a finding of confusing similarity. See *UEFA v Wei Wang easy king CAC-UDRP 104875*.

The Complainant further contends that the non-distinctive term draws a close association with the Complainant given the product category relates to the main goods and services offered by the Complainant, including under the “CORELLE” brand.

The Panel accepts this contention, and further considers that the “CORELLE” trademark appears to be the dominant element in the disputed domain name that seeks to create the impression that it is Corelle’s kitchenware.

It is also trite to state that the addition of the gTLD “.COM” does not add any distinctiveness to the disputed domain name and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that the disputed domain name is confusingly similar to the Complainant’s trademark “CORELLE” and this ground is made out.

NO RIGHTS OR LEGITIMATE INTERESTS

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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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

The Complainant contends the Respondent has no rights in the disputed domain name for the following reasons:

1. The Respondent is using the disputed domain name to resolve to an active website which offers for sale and/or advertises the sale of counterfeit and knock-off products infringing various intellectual property rights held by the Complainant.
2. The Respondent is not known by the name "CORELLE" at any point in time.
3. The Respondent is not making a legitimate commercial or fair use of the disputed domain name but is using it to impersonate or pass off as the Complainant to sell counterfeit products.

The Complainant has adduced evidence of the reputation of the "CORELLE" brand, and asserts that there is no credible, believable, or realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's rights and brand reputation.

At the time of writing this decision, the Panel on its own accord conducted an internet search of the disputed domain name website, which shows that the disputed domain name has expired. It appears that the disputed domain name is currently inactive.

The Panel infers that the Respondent is or was offering for sale and/or advertising the sale of products that are not authorised by the Complainant.

Using domain names for activity that includes sale of counterfeit goods or unauthorized goods is prima facie evidence that no lawful rights have been conferred nor legitimate interests exist for a bona fide use of the domain name.

The evidence here shows that the Respondent is not commonly known by the disputed domain name, nor the Respondent has legitimate interest over the disputed domain name.

The Complainant asserts that the only reason why the Respondent registered the disputed domain name is to take advantage of the Complainant's goodwill and valuable reputation.

The Panel accepts the evidence that the Respondent is not making a legitimate commercial or fair use of the disputed domain name but rather it is riding on the reputation of the Complainant to best serve its own unauthorised activity for commercial gain or otherwise using the disputed domain name.

No challenge has been made by the Respondent to the Complainant's contentions and assertions as it has not filed any administrative compliant response.

Given the evidence adduced by the Complainant of its portfolio of trademarks and wide reputation which the Panel accepts as evidencing the strength of its reputation, the Panel accepts and finds that the Respondent has no rights or legitimate interests to the disputed domain name.

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).

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The Complainant asserts that the Respondent registered the disputed domain name by intentionally attempting to attract, for commercial gain, internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's registered trademarks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

The Complainant further asserts that the Respondent registered the disputed domain name to drive internet traffic to the disputed domain name website and to impersonate or pass off as the Complainant to sell counterfeit products.

The evidence shows, and the Panel accepts, that the Complainant's trademark "CORELLE" is widely known all around the world. The Complainant's trademark was clearly registered prior to the registration of the disputed domain name. In addition, the Complainant has never authorized the Respondent to use the "CORELLE" trademark nor to register the disputed domain name.

Given the Complainant's wide reputation, it is highly unlikely that the Respondent did not know of the Complainant's trademark "CORELLE" and its business when it registered the disputed domain name.

The Panel is prepared to infer that the Respondent would have inevitably learnt about the Complainant, its trademark, and its business even by conducting a simple online search (*Teamreager AB v. Muhsin E.Thiebaut, Walid Victor*, WIPO Case No. D2013-0835, *Amundi Asset Management v. tang xiao ming*, WIPO Case No. D2019-2744).

Accordingly, the Panel is prepared to draw the adverse inference that the Respondent registered the disputed domain name incorporating the "CORELLE" trademark with the non-distinctive or generic term "KITCHENWARE" directly relating to the Complainant's business intentionally, to take advantage of reputation of the "CORELLE" trademark and the Complainant's business goodwill. This is evidence of registration in bad faith.

Use in bad faith

The Complainant contends that the Respondent has actual knowledge of the "CORELLE" trademark and was using the same to sell counterfeit products at the time of registering the disputed domain name.

The Panel has already accepted the Complainant's widely held reputation in its "CORELLE" trademark. The Complainant adduced evidence of an active commercial website under the disputed domain name that purports to sell products that are associated with the Complainant and/or its "CORELLE" trademark. The Panel is prepared to accept that this evidences actual knowledge.

Thus, the Panel accepts that the Respondent is using the disputed domain name to benefit its own commercial interests which are not authorized by the Complainant. Using the Complainant's trademark in the disputed domain name to capitalize on the Complainant's goodwill is evidence of bad faith.

The Panel notes that the Complaint refers to a cease and desist letter sent to the Respondent on February 20, 2023, to which the Complainant asserts that the Respondent has failed to acknowledge the letter nor remedy the infringement upon notification. Such evidence can often assist to prove or infer bad faith registration. As the Complainant has not adduced the letter in evidence, the Panel will ignore this assertion.

No challenge has been made by the Respondent to the Complainant's contentions and assertions as it has not filed any administrative compliant response.

Accordingly, the Panel accepts that the disputed domain name was registered by the Respondent and used in bad faith.

PROCEDURAL FACTORS

Language of proceedings request

The Complainant requests that the English language should be the language of the proceeding rather than the Chinese language for the following reasons:

1. The website content of the disputed domain name is written entirely in English. Therefore, it is reasonable to infer that the Respondent must have a good grasp of the English language such that he would be able to understand the language of the Complaint. In addition to the content on the disputed domain name, the domain name includes the English word "kitchenware".
2. All products offered on the Respondent's website, are offered in USD, a currency which relates to an English-speaking country, which again, is evidence that the Respondent understands the English language.
3. The "Contact Us" details on the Respondent's website lists an address located in the United States of America, therefore the Respondent likely can understand the language of the Complaint.
4. Translating this Complaint into Chinese will lead to undue delay and substantial expense incurred by the Complainant, who already bears the burden for filing the Complaint. Any further costs incurred would go against the spirit of the policy.

Rule 11(a) of the UDRP rules states:

Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In conducting the administrative proceeding, the Panel is required to ensure under Rule 10 of the UDRP rules that the Parties are treated with equality and be given a fair opportunity to present its case.

The Respondent has not filed any administratively compliant response to the Complainant's Amended Complaint.

On balance, the Panel considers the proceedings can proceed in the English language given the disputed domain name uses an English language trademark that is combined with a English language non-distinctive or generic term "kitchenware" that focuses on selling counterfeit products as alleged by the Complainant.

In the circumstances, the Panel accepts the Complainant's request and considers that it is appropriate to proceed to determine the proceeding in the English language.

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On March 30, 2023 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

That neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court.

As far as the e-mail notice is concerned, CAC received a notification that the e-mail notices sent to postmaster@corellekitchenware.com and to epamoi907eadhs@gmail.com were returned back as undelivered. The e-mail notice was also sent to novartisbio@safe-mail.net, but the CAC never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site.

The Respondent never accessed the online platform.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, 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 Complainant owns the international trademark "CORELLE" and the domain name <corelle.com> which is used in connection with its goods or services.

The Respondent registered the disputed domain name <corellekitchenware.com> on March 29, 2022. The disputed domain name appears to have been active at the time the Complainant was filed but is now resolving to an inactive website.

The Complainant challenges the Respondent's registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent failed to file any administratively compliant response.

For the reasons articulated in the Panel's reasons above, the Complainant has satisfied the Panel of the following:

- (a) The disputed domain name is confusingly similar to the Complainant's widely known "CORELLE" trademark.
- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- (c) The disputed domain name has been 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. **corellekitchenware.com**: Transferred

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION 2023-04-11

Publish the Decision
