

Decision for dispute CAC-UDRP-105246

Case number	CAC-UDRP-105246
Time of filing	2023-03-02 11:02:58
Domain names	corningcorellepieces.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	Yao Neo
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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

In these proceedings, the Complainant mainly relies on the following trademarks:

- "CORELLE", Canadian Trademark No. TMA167153, filed/registered as of January 2, 1970, and duly renewed, in the name of Instant Brands LLC (the Complainant);
- "CORELLE", Chinese Trademark No. 258707, registered as of August 10, 1986, and duly renewed, in the name of Instant Brands LLC (the Complainant);
- "CORELLE", Chinese Trademark No. 39201377, registered as of June 7, 2020, in the name of Instant Brands LLC (the Complainant);

It is worth noting that, the Complainant owns many similar trademarks in other countries, which have not been cited in these proceedings. More importantly, the Complainant also owns (within its family of marks) several trademarks worldwide (including in China, where Respondent is located) for "CORNINGWARE", such as Chinese Trademark No. 5591587 since September 14, 2009.

FACTUAL BACKGROUND

The Complainant is originally a Canadian company founded in 1970, active and known especially in the fields of kitchenware and

dinnerware, among others. Ever since, the Complainant has grown considerably and acquired commercial presence worldwide, also through internet sales and strong social media presence.

The Complainant (and its group of companies) owns a large-sized portfolio of trademarks including the wording "CORELLE", among which a Canadian registration dating back to 1970. The Complainant also owns a multitude of related domain names, such as <corelle.com> since November 9, 2000.

The disputed domain name <CORNINGCORELLEPIECES.COM > was registered on March 6, 2015 by the Respondent (as confirmed by the Registrar).

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its CORELLE trademark, as it fully incorporates this trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere addition of the Complainant's group's other trademark CORNINGWARE (first part) before the Complainant's trademark and of the generic component PIECES after the Complainant's trademark does not change the overall impression of a most likely connection with the trademark CORELLE of the Complainant. As to the gTLD ".com", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given seniority, distinctiveness and worldwide reputation of the CORELLE trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark, in an intentionally designed way, with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith. The addition of the Complainant's group's other trademark CORNINGWARE (first part) reinforces this view.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name, in order to mislead users (passing off) and attract them for commercial gain, which in combination with the well-known character of the Complainant's trademark may be considered as a clear indication of bad faith use.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

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).

The disputed domain name consists of the Complainant's whole trademark (CORELLE) preceded by the Complainant's group's other trademark CORNINGWARE (first part), the addition of the generic term PIECES not being sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to

shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the CORELLE trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark in the field of kitchenware/dinnerware (also in China, where Respondent is located) and the fact that the disputed domain name fully incorporates this trademark, it is rather clear that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to an active website, which is used by the Respondent to sell competing goods with the Complainant, in better prices. In other words, Respondent uses two trademarks of Complainant (and/or of its group of companies), CORELLE and CORNINGWARE, within a single domain name, thus in a way impersonating Complainant (passing off). For this Panel, such behaviour combined to the well-known character of the Complainant's trademark clearly amounts to use in bad faith. At the same time, the Respondent is based in China, where the Complainant is active and known. Therefore, it is impossible for this Panel to conceive any plausible active use of the disputed domain name by the Complainant that would be legitimate.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 wholly incorporates the Complainant's trademarks next to a generic term. The disputed domain name is therefore confusingly similar to the Complainant's trademarks.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademark to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's well-known trademark. His fraudulent use of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **corningcorellepieces.com**: Transferred
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PANELLISTS

Name	Sozos-Christos Theodoulou
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DATE OF PANEL DECISION 2023-04-10

Publish the Decision
