

Decision for dispute CAC-UDRP-105249

Case number CAC-UDRP-105249

Time of filing 2023-03-02 11:03:59

Domain names corelleofficial.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Instant Brands LLC

Complainant representative

Organization Stobbs IP Ltd

Respondent

Name Hai Ling Huang

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 registered owner of several trademarks consisting of or containing the term "CORELLE" in several classes and in numerous countries all over the world. Reference is particularly made to national Chinese trademark registration no. 258707 "CORELLE", registered on 9 August 1986 for goods in class 21 (according to the Registrar verification, the Respondent resides in China).

FACTUAL BACKGROUND

1. The Complainant is an US company active in the business of dinnerware goods and related services. The CORELLE brand has been launched in 1970 and the former owner of said brand merged with the Complainant in 2019.
2. It results from the Registrar verification that the current Registrant registered the disputed domain name on 9 April 2022. The language of the registration agreement is Chinese.
3. According to the Complainant's undisputed allegations, the disputed domain name resolves to a commercial website which offers for sale and/or advertises the sale of counterfeit and knockoff product infringing various intellectual property rights held by the Complainant.

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.

Language of the administrative proceedings

The Complainant requests for the proceedings to be administered in English language instead of Chinese, the language of the registration agreement.

Paragraph 10 of the UDRP Rules vests the Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. The Respondent did not reply to this request, since she did not actively participate at all in these proceedings

Against this background, the Panel finds that the following arguments warrant proceeding in a language other than that of the registration agreement:

- (i) the content of the website to which the disputed domain name resolves, 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;
- (ii) all products offered on the Respondent's website, are offered in USD, a currency which relates to an English speaking country;
- (iii) the website's terms and service include a governing law clause based on the laws of the United States of America;
- (iv) the disputed domain name includes the term "official", which is an English term;
- (v) English is the business language and the generic Top-Level Domain ("gTLD") ".com" is a supranational character; and
- (vi) taking into consideration that translating the Complaint and the annexes would cause significant expenses and delay while the Respondent is not participating in these proceedings.

In the light of the above, the Panel decides English to be the language of the present proceedings.

PRINCIPAL REASONS FOR THE DECISION

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant's registered trademark "CORELLE" is identically included in and placed at the beginning of the disputed domain name.

It is the view of this Panel that the combination of the trademark "CORELLE" with the additional term "official" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark. This additional term is descriptive. It is acknowledged that where a trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) do not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - "WIPO Jurisprudential Overview 3.0", at section 1.8).

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel holds that the Complainant successfully presented its prima facie case, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record that could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner. Furthermore, use of the disputed domain name for a webpage with commercial content excludes any non-commercial use in the sense of paragraph 4(c)(iii) of the Policy from the outset.

Finally, said use for commercial web content does - in the Panel's view - not represent a bona fide offering (pursuant to paragraph 4(c)(i) of the Policy). This use rather capitalizes on the reputation and goodwill of the Complainant's marks, since it prominently uses the "CORELLE" brand in the header, which may lead to the wrongful impression that the Respondent is an authorized reseller or is otherwise connected to Complainant.

3.

Finally, the Panel finds that the disputed domain name has also been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has registered the disputed domain name, which fully includes the Complainant's (older) trademark "CORELLE" in order to intentionally attempt to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy). The Panel has no doubt that the Respondent was aware of the trademark when he registered the disputed domain name, since the latter identically includes the trademark, prominently uses the "CORELLE" in the header of the website and allegedly sells products under this brand.

Finally, the Panel also considered the following additional relevant factors for its assessment of bad faith: (i) the failure of the Respondent to provide any evidence of actual or contemplated good faith use, and (ii) the Respondent originally hiding his identity behind a privacy shield.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **corelleofficial.com**: Transferred

PANELLISTS

Name	Tobias Malte Müller
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DATE OF PANEL DECISION 2023-04-18

Publish the Decision
