

Decision for dispute CAC-UDRP-105512

Case number	CAC-UDRP-105512
Time of filing	2023-06-09 10:02:22
Domain names	corelleworld.shop, corelleusafactory.shop, corelleusaoutlet.shop, onlinecorelle.shop

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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RESPONDENTS

Name	Zhen Sheng Dai
Name	Wen Zhou Fu Jie Jin Rong Xin Xi Fu Wu You Xian Gong Si

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of rights in several "CORELLE" trademarks as well as other intellectual property rights worldwide, including but not limited to

- the UK trademark No. 00904259231 registered on January 27, 2005
- the CA trademark No. 0318964 registered on January 2, 1970
- the CN trademark No. 258707 for class 21 registered on August 9, 1986
- the CN trademark No. 39201377 for class 35 registered on June 7, 2020.

The Complainant also owns the domain name <CORELLE-COM>, which is used for its main operating website, being live since at least November 9, 2000.

FACTUAL BACKGROUND

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

The brand “CORELLE” was launched in 1970 and since then has built a significant reputation and a vast amount of goodwill in the “CORELLE” trademarks in the UK and abroad in relation to dinnerware goods and related services. The “CORELLE” brand has extensive reach offering its products and services worldwide. In 2019, Corelle Brands LLC merged with the Complainant, creating a company with an enterprise value over two billion US-Dollars. The Complainant is also active on various social media platforms and has generated a significant level of endorsement.

The Complainant uses, inter alia, the domain name <CORELLE.COM> and the trademark “CORELLE” for its services.

The disputed domain name <CORELLEWORLD.SHOP> has been registered by the 1. Respondent on January 6, 2023.

The disputed domain name <ONLINECORELLE.SHOP> has been registered on January 10, 2023. The disputed domain name <CORELLEUSAFATORY.SHOP> has been registered on January March 15, 2023. The disputed domain name <CORELLEUSAOUTLET.SHOP> has been registered on May 29, 2023. These three disputed domain names have been registered by the 2. Respondent.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 are 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 names (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 names have been registered and are 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

As the Respondents did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw

such inferences therefrom as it considers appropriate. Thus, the Panel accepts the contentions of the Complainant as admitted by the Respondents.

1. Procedural Issue: Language of the Proceeding

The Complaint is accepted in English. Further proceeding can be conducted in English.

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, unless otherwise agreed by the Parties or specified otherwise in the Registration Agreement. The Panel has the authority to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complaint was filed in English and the Complainant requested that English be the language of the proceeding, even though the Registrar indicated the language of the Registration agreement to be Chinese.

However, as noted by previous UDRP panels, paragraph 11(a) of the Rules must be applied in accordance with the requirements of paragraphs 10(b) and 10(c) of the Rules that the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see e.g. WIPO Case No. D2006-0334, General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM; WIPO Case No. D2014-2094, Groupe Auchan v. Yang Yi; WIPO Case No. D2016-1763, Orlane S.A. v. Yu Zhou He / He Yu Zhou).

In deciding whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, the Panel considers all the circumstances of the administrative proceeding. The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice. Moreover, it is relevant whether the expenses of requiring translation and the delay in the proceedings can be avoided without, at the same time, causing injustice to the parties (see e.g. WIPO Case No. D2008-0400, SWX Swiss Exchange v. SWX Financial LTD).

Firstly, the disputed domain names and the websites indicate that the Respondent knows and understands the English language. The disputed domain names all include English words, such as “outlet”, “factory”, “online” and even “USA”. Moreover, the websites are all worded entirely in English, including the whole layout of the website (e.g. “Contact us”, “my account”) as well as the descriptions of the products (e.g. “Dinnerware Set”) and notes on return policies. The currency of the offered products is also given in USD and therefore mainly relates to consumers in English speaking countries.

Furthermore, since the Respondents were notified by the CAC in Chinese, they had the possibility to object to the proceeding language. Nevertheless, they did not respond on this issue. The Panel also finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Chinese. The Panel also takes into consideration that English seems to be the only common language amongst the Parties.

Considering all the indications above, the Panel concludes that the Respondents would not be prejudiced if English is adopted as the language of the proceeding. In keeping with the Policy aim of providing a relatively time and cost-efficient procedure for the resolution of domain name disputes, the Panel accordingly determines that it would be appropriate for English to be the language of the proceeding.

2. Procedural Issue: Consolidation of Multiple Domain Names and Respondents

In regard to all relevant circumstances, the Panel finds that the consolidation of the domain name disputes asserted by the Complainant against the two Respondents is consistent with the Policy and Rules and comports with prior relevant UDRP decisions in this area. The Panel will proceed to a decision on the merits of these domain name disputes.

Neither the Policy nor the Rules expressly provide for the consolidation of multiple respondents in a single administrative proceeding. In fact, paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name provided that the domain names are registered by the same domain name holder. Paragraph 10(e) of the Rules states further that a Panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and the Rules. According to point 4.11.2 of the WIPO Jurisprudential Overview 3.0, if a complaint is filed against multiple respondents, Panels look at whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. In previous decisions, Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate. Factors may be similarities in or relevant aspects of the registrants’ identities, the registrants’ contact information including email addresses, postal addresses, or phone numbers, relevant IP addresses, name servers, or webhosts, the content or layout of websites corresponding to the disputed domain names, the nature of the marks at issue, any naming patterns in the disputed domain names, the relevant language/scripts of the disputed domain names particularly where they are the same as the marks at issue, any changes by the respondent relating to any of the above items following communications regarding the disputed domain names, any evidence of respondent affiliation with respect to the ability to control the disputed domain names, any (prior) pattern of similar respondent behaviour, or other arguments made by the complainant and/or disclosures by the respondents (see e.g. WIPO Case No. D2010-0281, Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons; WIPO Case No. D2016-2268, Bayerische Motoren Werke AG v. MIKE LEE / WHOISGUARD PROTECTED, WHOISGUARD, INC., Yang Xiao, Xiao Yang, Ning Li, Li Ning, MIKE LEE; WIPO Case No. D2014-1000, VICINI S.P.A. v. runs yao / delao dkeo).

The Complainant has established more likely than not that the disputed domain names are under control of a common operator.

The Panel notes that at the time the Complaint was filed, the disputed domain names were registered under a privacy shield. The disputed domain names incorporate the Complainant's "CORELLE" mark in its entirety and were registered and updated in close temporal proximity within only a few weeks and months. Each disputed domain name uses ".SHOP" as its gTLD. They also use the same registrar. The disputed domain names have been used in an identical manner, since the Complainant asserts that the disputed domain names point to websites selling counterfeit "CORELLE" products. Furthermore, the resolving websites are highly similar in terms of look and structure of the website surface. The Complainant further states (undisputed) that the disputed domain names all use Cloudflare proxy services to mask the web hosting service provider.

Overall, all the facts above indicate that the disputed domain names are under common control.

In light of such considerations, the Panel finds that the consolidation of the domain name disputes involving the two Respondents is procedurally efficient. Consolidation will permit multiple disputes arising from a common nucleus of facts and allows common legal issues to be resolved in a single administrative proceeding. Doing so promotes the shared interests of the parties in avoiding unnecessary duplication of time, effort and expense, and generally furthers the fundamental objectives of the Policy. The consolidation will not unfairly favor or prejudice any party. Both Respondents had the opportunity to challenge the claims of the Complainant, but did not respond to the Complaint.

3. The disputed domain names are confusingly similar to the trademark "CORELLE" of the Complainant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid rights for the trademark "CORELLE".

The disputed domain names include the Complainant's trademark in its entirety. The Complainant's trademark is being used as the dominant element in the disputed domain names. Neither the addition of the gTLD suffix ".SHOP" nor adding generic terms, such as "online", "world", "USA", "factory" and "outlet", are sufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant's trademark, nor and do they change the overall impression of the designation as being connected to the trademark of the Complainant.

4. The Respondents have no rights or legitimate interests in respect of the disputed domain names within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondents have no rights or legitimate interests in the disputed domain names, since the Respondents are not licensees of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name.

Also, the domain names at stake do not correspond to the names of the Respondents and they are not commonly known as "CORELLE".

The disputed domain names point to websites offering dinnerware that is highly similar to the Complainant's products. Therefore, the domain name websites are misleading and create a false impression of affiliation between the Complainant and the Respondents, since the e-shops hosted are not legitimate and offer to sale prima facie counterfeited products branded with the trademarks of the Complainant. Also, there are no disclaimers as to the Respondents' lack of relationship with the Complainant.

Moreover, such use of the disputed domain names cannot be considered legitimate non-commercial or fair use without intent for commercial gain, since the Respondents are obviously attempting to gain from the sales of prima facie counterfeit products. It seems to the Panel that the Respondents intend to benefit from the Complainant's trademark reputation to illegitimately trade on the Complainant's popularity for commercial gain.

Summarised, there is no evidence for a use of the disputed domain names for any bona fide offer of goods or services or a legitimate non-commercial or fair use.

5. The disputed domain names have been registered and are being used in bad faith within the meaning of the Policy.

The Complainant's trademark "CORELLE" is widely known in several countries. The Complainant also operates and offers its products using this trademark in China, where both Respondents have their postal addresses. The timing of the registration of the disputed domain names indicate the Respondents' bad faith in registering such domain names, as, at that time, the Complainant's trademark "CORELLE" was already protected for decades in several countries. Hence, it seems very plausible, that the Respondents knew the trademark of the Complainant at the time of registration. Given the distinctiveness of the Complainant's trademark and reputation, especially but not limited to table-/dinnerware products, it can be concluded that the Respondents have registered the disputed domain names with full knowledge of the Complainant's trademark.

Also, the Respondents' use of similar websites with presumed knowledge of the corresponding trademark rights of the Complainant indicates that the Respondents have registered and are using the disputed domain names in bad faith. It seems very likely that the purpose in registering the disputed domain names was solely to capitalize on the reputation of the "CORELLE" trademark by diverting internet users seeking products of the Complainant to their own commercial websites. It follows that the Respondents attempt to attract internet users by creating a likelihood of confusion with the Complainant's trademark. Such likelihood of confusion is also evidence of bad faith registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **corelleworld.shop**: Transferred
- 2. **corelleusafactory.shop**: Transferred
- 3. **corelleusaoutlet.shop**: Transferred
- 4. **onlinecorelle.shop**: Transferred

PANELLISTS

Name	Dominik Eickemeier
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DATE OF PANEL DECISION 2023-07-07

Publish the Decision