

Decision for dispute CAC-UDRP-105702

Case number	CAC-UDRP-105702
Time of filing	2023-08-16 09:24:12
Domain names	corelle-us.shop, corelleonline.shop, online-corelle.shop, us-corelle.shop, corelleonline-us.shop

Case administrator

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

Organization	Instant Brands LLC
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Complainant representative

Organization	Stobbs IP
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RESPONDENTS

Name	Yuan Yan He
Name	Yan Hu

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 the CORELLE trademark including but not limited to the followings:

- Registration number: 258707
 - Jurisdiction: China
 - Date of registration: 9 August 1986
 - Class: 21
- Registration number: 39201377
 - Jurisdiction: China
 - Date of registration: 7 June 2020
 - Class: 35
- Registration number: TMA167153
 - Jurisdiction: Canada
 - Date of registration: 2 January 1970
 - Class: 21
- Registration number: UK00904259231
 - Jurisdiction: United Kingdom
 - Date of registration: 27 March 2006

- Class: 21

The terms covered by the Complainant's CORELLE 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.' (Class 21, UK00904259231).

FACTUAL BACKGROUND

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

The Complainant is domiciled in Illinois, United States. Since launching the CORELLE brand in 1970, the Complainant has built a significant reputation and has built up 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 Instant Brands Inc, creating a company with an enterprise value over \$2 billion. The Complainant has an active online presence including owning the domain name corelle.com which is used for the main operating website at (<https://www.corelle.com/>), with the website being live since at least as early as 9 November 2000. The Complainant is also active on social media and has generated a significant level of endorsement on Facebook, Instagram, Pinterest and LinkedIn.

The Respondent is domiciled in Anhui, China.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names 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).

The Complainant claims rights in the CORELLE mark through its global trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See Avast Software s. r. o. v Milen Radumilo, 102384, (CAC 2019-03-12).

The Complaint contends that addition of generic terms such as "online", "us" and hyphen "-", in the disputed domain names are non-distinctive and the generic top-level domains ("gTLDs") do not affect the confusing similarity for the purposes of paragraph 4(a)(i) of the Policy.

The Panel accepts that the disputed domain names are confusingly similar to Complainant's CORELLE trademark.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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). More specifically, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain names, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

The Complainant claims that the Respondent is using the disputed domain names to resolve to active websites which offer for sale and/or advertise the sale of counterfeit and knockoff product infringing various intellectual property rights held by the Complainant and brands unrelated to the Complainant. The websites resolved by the disputed domain name impersonate/pass off as the Complainant, claiming to be official, licensed, or at a minimum affiliated with the Complainant. However, the Complainant submits that the Respondent

has never legitimately been known by the name CORELLE.

The Complainant submits that nothing about the disputed domain names suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names. As mentioned above, the disputed domain names are being used to impersonate/pass off as the Complainant in order to sell counterfeit product, this is clear commercial activity.

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names. The burden of proof has been shifted to the Respondent to prove that they have right or legitimate interests to the disputed domain names. However, the Respondent has not submitted an official response to rebut the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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).

The Complainant argues that the registration of the CORELLE trademarks pre-dates the registration of the disputed domain names and CORELLE enjoys a wide reputation. Furthermore, the Respondent was unequivocally aware of the CORELLE brand given the Respondent's significant use of the CORELLE trademarks on the websites resolved by the disputed domain names, and that the websites are set up to impersonate/pass off as the Complainant in order to sell counterfeit and knockoff product. Therefore, the Complainant submits that the Respondent had knowledge of CORELLE and that the disputed domain names are registered with the sole purpose of targeting the Complainant's CORELLE trademarks (and other unrelated brands). Using a confusingly similar domain name in a manner disruptive of a complainant's business by trading upon the goodwill of a complainant for commercial gain evinces bad faith under paragraph 4(b)(iii) & (iv) of the Policy. See *TOD'S S.p.A. vs. , 102869 (CAC 2020-03-06)* ("The Panel finds that the Respondents have used the disputed domain names intentionally to attract Internet users to their websites offering counterfeit and other competing products for commercial gain by creating a likelihood of confusion with the Complainant's marks as to the source of the Respondents' website and the products promoted on it."); see also *Under Armour Inc. vs. Web Commerce Communications Limited/Whoisprotection.cc, 104892 (CAC 2022-11-11)* ("Beyond this, the fact that prima facie counterfeit "UNDER ARMOUR" branded shoes and apparel were offered for sale on the website corresponding to (most of) the disputed domain names indicates that the Respondents were fully aware of the Complainant's trademarks reputation and association with the Complainant. This also indicates that Respondents' purpose in registering the disputed domain names was solely to capitalize on the reputation of these trademarks by diverting internet users seeking products of the Complainant to their own commercial website."). Complainant provides a screenshot of the resolving webpage, which displays the CORELLE mark and various images. Without any proper reasons submitted by the Respondent, the Panel agrees that Respondent disrupts Complainant's business and attempted to commercially benefit off Complainant's mark in bad faith under paragraph 4(b)(iii) & (iv) of the Policy.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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.

PRELIMINARY FINDINGS - CONSOLIDATION:

Pursuant to Paragraph 10(c) of the Rules that a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules. The Rules further state that Respondent means the holder of a domain name registration against which a complaint is initiated. The Complainant submitted a request for consolidation that:

1. close temporal proximity of the creation and updated date of the disputed domain names with all five domain names being registered within just over the span of one month;
2. all five disputed domain names use the ".shop" generic Top-Level Domain;
3. all five disputed domain names use a common registrar;
4. all five disputed domain names use a privacy protect service to mask the registrant;
5. all five disputed domain names use Cloudflare proxy services to mask the web hosting service provider;
6. all five disputed domain names resolve to a website with the primary purpose of advertising counterfeit product infringing the rights of the Complainant;
7. the similarity of disputed domain names anatomy to one another.

The Respondent did not submit a timely Response within the required period of time.

Despite the details of the registrants of the disputed domain names are not entirely the same, the Registrar, privacy protect service provider and the Cloudflare proxy services are the same, and the registration dates of the disputed domain names are very close. All of the registrants are domiciled in the same city, Auhui, China. Without receiving a Response from the Respondent, the Panel tends to agree that the disputed domain names are under common control. On this basis, the Panel accepts the consolidation request in

accordance with Paragraph 10(e) of the Rules and article 4.11.2 of the WIPO Overview 3.0.

PRELIMINARY FINDINGS - LANGUAGE OF PROCEEDING:

The Panel notes that the language of the Registration Agreement is Chinese as confirmed by the Registrar. The official Complaint was submitted in English and the Respondents did not submit an official response. Pursuant to paragraph 11 of the Rules, 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.

The Complainant requests to use English as the language of proceeding, with the arguments that website contents of all the disputed domain names are written entirely in English, some products offered on the Respondent's websites are offered in USD, and translating this Complaint into Chinese will lead to undue delay and substantial expense incurred by the Complainant, who already bears the burden for filing this Complaint. The Respondent has not declined to use English as the language of proceeding of the current case.

The Panel is bilingual and is well equipped to deal with the proceeding in both Chinese and English. Having considered the circumstances, Panel believes that it would be fair to both parties to use English as the language of proceeding and it can also uphold the principle of UDRP being a swift dispute resolution process. On this basis, the Panel determines that the language requirement has been satisfied and decides that the language of proceeding to be English.

PRINCIPAL REASONS FOR THE DECISION

Having established all three elements required under the UDRP Policy, the Panel concludes that relief shall be granted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **corelle-us.shop**: Transferred
2. **corelleonline.shop**: Transferred
3. **online-corelle.shop**: Transferred
4. **us-corelle.shop**: Transferred
5. **corelleonline-us.shop**: Transferred

PANELLISTS

Name	Mr Paddy TAM
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DATE OF PANEL DECISION	2023-09-09
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Publish the Decision
