

ADMINISTRATIVE PANEL DECISION

CW Brands LLC v. dysolo Moli, GNNS

Case No. D2022-4120

1. The Parties

The Complainant is CW Brands LLC, United States of America, represented by Kaufman & Kahn, LLP, United States of America.

The Respondent is dysolo Moli, GNNS, Singapore.

2. The Domain Name and Registrar

The disputed domain name <coldwatercreeki.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 1, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 10, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2022.

The Center appointed 陈长杰 Jacob (Changjie) Chen as the sole panelist in this matter on December 20, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of

Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a United States of America online retailer of women's organic textile clothing, accessories, shoes and home décor.

The Complainant holds several registrations of COLDWATER CREEK trademark, including the United States of America trademark registrations No. 1531418, No. 1861320 and No. 1876534, registered respectively on March 21, 1989, November 1, 1994, and January 31, 1995.

According to the information disclosed by the Registrar, the Respondent is dysolo Moli, GNNS, located in Singapore.

The disputed domain name was registered on July 4, 2022. The disputed domain name currently resolves to an invalid website. According to the evidence provided by the Complainant, the disputed domain name resolved to an online gambling website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its COLDWATER CREEK trademark since the disputed domain name reproduces its COLDWATER CREEK trademark with a plus of one letter "i". The additional letter "i" does not differentiate the overall meaning and impression of the disputed domain name from the Complainant's trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence of the Respondent's demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent has the intention to use the disputed domain name, for commercial gain, to mislead the consumers or to tarnish the Complainant's COLDWATER CREEK trademark rather than make a legitimate noncommercial use or fair use. Furthermore, the Respondent is not commonly known by the disputed domain name and has never acquired any trademark rights corresponding to the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. Furthermore, the Respondent's use of the disputed domain name is with the intention to attract Internet users, for commercial gain, to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on its website or location.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns rights upon numerous registrations of COLDWATER CREEK trademark. The Complainant has successfully established its rights to the COLDWATER CREEK trademark.

It is well established that the generic Top-Level Domain (“gTLD”) “.com” as a standard registration requirement is disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s trademark.

The disputed domain name <coldwatercreeki.com> incorporates the COLDWATER CREEK trademark in its entirety. Previous UDRP decisions have established that if a complainant’s trademark is recognizable within a domain name that is sufficient to establish that the domain name is identical or confusingly similar to the complainant’s trademark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The additional letter “i” after the COLDWATER CREEK trademark does not prevent a finding of confusing similarity between the disputed domain name and the COLDWATER CREEK trademark. See section 1.8 of the [WIPO Overview 3.0](#).

Thus, the Panel concludes that the disputed domain name is confusingly similar to the COLDWATER CREEK trademark.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted evidence of its exclusive rights to the COLDWATER CREEK trademark. According to the evidence on record, there is no indication that the Respondent has any relationship with Complainant or that the Respondent has any authorization to use the Complainant’s trademark or to use the trademark to register the disputed domain name. Furthermore, there is no element from which the Panel could infer the Respondent’s rights over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, and the burden of production shifts to the Respondent. See *International Hospitality Management - IHM S.p.A. v. Enrico Callegari Ecostudio*, WIPO Case No. [D2002-0683](#). However, in this case, the Respondent has failed to come forward with any evidence giving rise to rights or legitimate interests in respect of the disputed domain name.

The disputed domain name currently resolves to an invalid website, but according to the Complainant’s evidence, the disputed domain name resolved to a website showing online gambling content. Such use of the disputed domain name cannot be deemed as a *bona fide* offering of goods or services, or making a legitimate noncommercial or fair use.

In addition, the nature of the disputed domain name, comprising the COLDWATER CREEK trademark and the additional letter “i” is inherently misleading, and carries a risk of Internet user confusion. Such composition of the disputed domain name does not support a finding of any rights or legitimate interests.

The Panel has weighed all available evidence and materials and finds that the facts do not support a finding of any rights or legitimate interests of the Respondent in respect of the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's COLDWATER CREEK trademark was registered far predating the registration date of the disputed domain name. The disputed domain name differs for only one letter "i" from the Complainant's trademark. Furthermore, according to the Panel's Internet search with the key word "Cold Water Creek" on main search engines, the returned results related to the Complainant on the first page. Thus, the Panel finds that, on balance of probabilities, the Respondent likely registered the disputed domain name that is almost identical to the Complainant's trademark in order to target the Complainant and its trademark.

The Respondent used the disputed domain name redirecting to website displaying online gambling content. Given the nature of the disputed domain name, it is very likely that the disputed domain name will attract Internet users who look for the Complainant's products or services to visit the website associated with the disputed domain name that displays online gambling content. Thus, the Panel views that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or products and services.

In addition, in view of the Respondent's past use of the disputed domain name, the Panel views that the Respondent's current passive holding of the disputed domain name does not prevent a finding of bad faith and still carries the risk of restoring the previous infringing website or establish other websites. That still may cause damage or threats to the Complainant and its COLDWATER CREEK trademark.

Given all the circumstances of the case, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the third element under paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <coldwatercreeki.com> be transferred to the Complainant.

/陈长杰 Jacob (Changjie) Chen/

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Sole Panelist

Date: January 3, 2023