

ADMINISTRATIVE PANEL DECISION

Caroll International v. Binh Nguyen

Case No. D2023-3753

1. The Parties

Complainant is Caroll International, France, represented by MIIP MADE IN IP, France.

Respondent is Binh Nguyen, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <carollshop.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2023. On September 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 2023, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to Complainant on September 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 12, 2023.

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 Respondent of the Complaint, and the proceedings commenced on September 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 9, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on October 23, 2023. 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

Complainant is a company organized under the laws of France that is active in the fashion industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its company name and brand CAROLL, including, but not limited, to the following:

- word mark CAROLL, European Union Intellectual Property Office (EUIPO), registration number: 009892431, registration date: September 16, 2011, status: active;
- word mark CAROLL, National Institute of Industrial Property France (INPI), registration number: 1233265, registration date: April 15, 1983, status: active.

Moreover, Complainant has demonstrated to own various domain names in relation to its CAROLL trademark, *inter alia*, since 1997 the domain name <caroll.com>, which resolves to Complainant's official website at "www.caroll.com", promoting Complainant's fashion products and related services in the fashion industry worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Viet Nam and registered the disputed domain name on August 9, 2023. By the time of rendering this decision, the disputed domain name resolves to a website at "www.carollshop.com", which offers no relevant content, but notifies users that "our store is under annual maintenance". Complainant, however, has evidenced that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.carollshop.com", offering clothing items, thereby taking pictures from third parties' websites and/or displaying third parties' fashion goods.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that its fashion house is a famous French clothing brand for women, which was created back in 1963, and that due to significant advertising campaigns, its CAROLL trademark is meanwhile well-known internationally. Also, Complainant submits that the disputed domain name is confusingly similar to Complainant's CAROLL trademark, as it is composed of the latter in full, associated with the descriptive element "shop". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent has not been licensed or otherwise authorized by Complainant to use its CAROLL trademark, or to register any domain name incorporating the latter, and (2) the disputed domain name points to a website which looks like an official e-shop offering clothing items, obviously in order to take unfair advantage of the reputation of Complainant's CAROLL trademark and to divert Complainant's customers for Respondent's own advantage. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's CAROLL trademark is well-known, (2) some pictures on the website under the disputed domain name are taken from third-party websites and/or are displaying third parties' goods, and (3) objectively, there is no reason for Respondent to use Complainant's CAROLL trademark within the disputed domain name and to propose the same (fashion) goods thereunder, except for taking advantage of Complainant's reputation and diverting consumers from Complainant's website, which demonstrates Respondent's acting in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, it is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's CAROLL trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Moreover, the Panel finds the entirety of Complainant's CAROLL trademark is reproduced within the disputed domain name, simply added by the descriptive term "shop". Accordingly, the disputed domain name is confusingly similar to such trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms (here, the term "shop") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainant's CAROLL trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its CAROLL trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term "caroll" on its own. Finally, the disputed domain name resolved at some point in the past to a commercially active website at "www.carollshop.com", offering clothing items which are at the core of Complainant's official business. Such use of the disputed domain name, therefore, neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy. This assessment applies regardless of the fact that the disputed domain name, by the time of rendering this decision, resolves to a typical "under maintenance" page and, therefore, is temporarily kind of passively held by Respondent. UDRP panels have found that the mere registration of a domain name does not by itself automatically confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.10.1).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Third, the Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant's fashion business and its rights in the CAROLL trademark when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name to run website at "www.carollshop.com", offering clothing items, thereby taking pictures from third parties' websites and/or displaying third parties' fashion goods, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant's CAROLL trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Again, this assessment applies regardless of the fact that the disputed domain name, by the time of rendering this decision, resolves to typical "under maintenance" page and, therefore, is temporarily kind of passively held by Respondent. Considering the totality of the circumstances of this case, there is no room for any plausible use of the disputed domain name which would not take unfair advantage by profiting from the undisputed reputation which Complainant's CAROLL trademark enjoys in the fashion industry. Therefore, the present passive holding of the disputed domain name by Respondent is not in contrast to hold that Respondent has registered and is using the disputed domain name in bad faith within the larger meaning of paragraph 4(b) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <carollshop.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: November 2, 2023