

ADMINISTRATIVE PANEL DECISION

Entertainment Trading A/S v. Privacy Service Provided by Withheld for Privacy ehf / Geraldine Guivarch, Nature and Wellness Ltd
Case No. D2022-0286

1. The Parties

The Complainant is Entertainment Trading A/S, Denmark, represented by BrandIT GmbH, Switzerland.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Geraldine Guivarch, Nature and Wellness Ltd, United Kingdom.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 27, 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 January 28, 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 February 7, 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 February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. On February 8, 2022, the Respondent sent an email to the Center but did not submit any formal response. On February 17, 2022, the Complainant requested the suspension of the proceedings to try to settle the case. The Center confirmed the suspension on the same

day. On March 15, 2022, the Complainant requested the Center to reinstitute the proceedings as the settlement discussions were unsuccessful. The proceedings were reinstated on March 18, 2022 and the Response due date was adjusted to March 30, 2022. The Center notified the Parties of commencement of Panel appointment process on March 31, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on April 14, 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, Entertainment Trading A/S, is an independent distributor of interactive entertainment products based in Denmark.

The Complainant owns several trademarks for the sign COOLSHOP, including the following:

- COOLSHOP, European Union word mark registered with the EUIPO on February 9, 2009 under number 006758924 in class 35;
- COOLSHOP, United Kingdom word mark registered with the UKIPO on February 9, 2009 under number UK00906758924 in class 35.

The Complainant manages an online store through its website linked to several domain names including <coolshop.com> and <coolshop.co.uk>. Initially selling computer games, the Complainant now sells more than 250,000 products of a large range under its COOLSHOP brand. COOLSHOP has shops in 8 countries: Denmark, Sweden, Norway, Finland, the Netherlands, the United Kingdom (where the Respondent resides), Iceland and Germany.

The Disputed Domain Name was registered on December 31, 2020 and appears to refer to an online shop offering various types of goods for sale.

On December 16, 2021, the Complainant sent a cease and desist letter to the Respondent's email addresses referenced in the Whois records and on the website linked to the Disputed Domain Name. Following two reminders sent on January 4, 2022, the Respondent responded on January 5, 2022, acknowledging receipt of the Complainant's email. In its email, the Respondent stated that its teams were unfortunately not available at that moment due to holidays, but would fix this issue as soon as possible. The Complainant sent another reminder on January 11, 2022 but received no response.

The Respondent sent one more communication on February 8, 2022 in the framework of the present proceedings, stating the following:

"Hello,
We apologize for the delay, but the resolution of this issue is in progress.
It will take a little more time, we have to be reachable for our customers.
We apologize again, we will keep you informed of the progress of the transition.
Kind regards,"

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it

claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is not commonly known by the Disputed Domain Name and has not used the Disputed Domain Name in connection with a legitimate use. Finally, the Complainant claims that the Disputed Domain Name has been registered and is being used in bad faith. The Complainant contends that the Respondent must have known about the Complainant and its rights, and uses the Disputed Domain Name in an attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

B. Respondent

The Respondent did not reply to the Complainant's contentions, but on February 8, 2022 sent the email communication reproduced above.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's COOLSHOP trademarks have been registered and used in connection to the Complainant's retail business.

The Panel observes that the Disputed Domain Name <coolshp.com> corresponds to the Complainant's COOLSHOP mark apart from the omission of the third "o" in the mark.

The Panel finds that such omission of one letter can be considered as "typosquatting", as the Disputed Domain Name contains sufficiently recognizable aspects of the Complainant's mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's COOLSHOP trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named Geraldine Guivarch from the company Nature and Wellness Ltd. There are no indications that a connection between the Complainant and the Respondent exists or existed.

The Panel observes that the Disputed Domain Name refers to an online shop offering various types of goods for sale, but does not seem to copy elements from the Complainant's official online shop. The Panel agrees with the Complainant that the term "shp" in the Disputed Domain Name probably refers to "shop". However, as the Disputed Domain Name combines two terms, "cool" and "shp" (referring to "shop"), which combination is not so unnatural, the Panel finds that there could be legitimate interests to operate an online shop under the Disputed Domain Name in certain circumstances.

That being said, the Panel nevertheless finds that in this case, such legitimate interests are not demonstrated. The Panel takes the following elements into account:

- although the Panel finds that the Complainant's COOLSHOP mark is comprised of two dictionary terms, the combination of which is not particularly original, the Complainant provided evidence of the reputation and use of its mark including in the United Kingdom where the Respondent is located. The Panel further notes that the Complainant was operating <coolshop.com> and <coolshop.co.uk> before the registration of the Disputed Domain Name. Moreover, the Disputed Domain Name corresponds to the Complainant's COOLSHOP mark apart from the omission of one single letter. The Panel finds it likely that the Respondent knew of the Complainant's rights when registering the Disputed Domain Name;
- the Complainant provided evidence of actual customer confusion between the Disputed Domain Name and its COOLSHOP mark, the Complainant being contacted about financial transactions mentioning the Disputed Domain Name;
- the Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In its communication of February 8, 2022 in the framework of the present proceedings, the Respondent simply apologized for the delay and stated that "the resolution of this issue is in progress". In the absence of an official Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control*

Techniques Limited v. Lektronix Ltd, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent should have been aware of the Complainant and its rights in the COOLSHOP mark when it registered the Disputed Domain Name:

- the Complainant's registered trademark rights predate the registration of the Disputed Domain Name by more than 10 years;
- the Disputed Domain Name corresponds to the Complainant's COOLSHOP mark apart from the omission of one single letter;
- the Complainant provided evidence of the reputation and use of its mark including in the United Kingdom where the Respondent is located. According to this evidence, a simple search on the Internet for the term "coolshp" corresponding to the Disputed Domain Name provides numerous results pointing to the Complainant's COOLSHOP mark.

In the Panel's view, the Respondent's probable awareness of the Complainant's trademark rights at the time of registration of the Disputed Domain Name, combined with the nature of the Disputed Domain Name, signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant. The Panel finds that the omission of one single letter as compared to the Complainant's COOLSHOP mark is a form of typosquatting which is evidence of bad faith (*ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#); *WestJet Airlines Ltd. v. Taranga Services Pty Ltd*, WIPO Case No. [D2010-1814](#); and *Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager*, WIPO Case No. [D2011-1951](#)).

As mentioned above under section 6.B, the Complainant provided evidence of actual customer confusion between the Disputed Domain Name and its COOLSHOP mark, the Complainant being contacted about financial transactions mentioning the Disputed Domain Name. The Panel finds that this also supports a finding the Respondent has registered the Disputed Domain Name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing or to present a credible evidence-backed rationale for registering the Disputed Domain Name. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name was registered and used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 <coolshp.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/
Flip Jan Claude Petillion
Sole Panelist
Date: April 28, 2022