

ADMINISTRATIVE PANEL DECISION

CoryxKenshin LLC v. Whois Privacy, Private by Design, LLC / minh pham Cardinal

Case No. D2022-2794

1. The Parties

The Complainant is CoryxKenshin LLC, United States of America (“United States”), represented by Carlson, Gaskey & Olds, P.C., United States.

The Respondent is Whois Privacy, Private by Design, LLC, United States / minh pham Cardinal, Canada.

2. The Domain Name and Registrar

The disputed domain name <coryxkenshin1.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 30, 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 August 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 amendment to the Complaint on August 8, 2022.

The Center verified that the Complaint together with the amendment to the 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 August 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 5, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on September 9, 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, CoryxKenshin LLC, is involved in the sale of several goods including apparel, hats, shirts, hoodies, long sleeve shirts, sweatshirts, water bottles, and stickers, and services such as providing on-line videos featuring video game reviews, video game play with commentary and narration and several others, which it identifies with the trademark CORYXKENSIN.

The Complainant owns United States Trademark Registration No. 6.482.025 CORYXKENSIN, registered on September 14, 2021 in classes 25 and 4, with first use on June 4, 2009.

Also, the Complainant has owned the domain name <coryxkenshin.com> since February 29, 2016. CORYXKENSIN goods and services are promoted in the relevant website.

The YouTube channel was created on April 26, 2009 where the Complainant provides on-line videos in association with the trademark CORYXKENSIN. The number of the Complainant's subscribers has also significantly increased. The archive website "Wayback Machine" indicates that the YouTube Channel for CoryxKenshin had 7.27 million subscribers on September 19, 2020; 9.14 million subscribers on March 12, 2021 and 13.7 million subscribers on July 18, 2022.

The disputed domain name <coryxkenshin1.com> was registered on December 14, 2021 and resolves to a website which offers goods similar to those offered by the Complainant.

5. Parties' Contentions

A. Complainant

In essence, the Complainant claims that the disputed domain name is confusingly similar with the trademark CORYXKENSIN in which the Complainant has registered and unregistered rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is using the Complainant's trademark without permission and is using the identical or confusingly similar disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent has copied the Complainant's website design and is selling goods that are identical to the goods found on the Complainant's website. Many of the products on the Respondent's website are even organized in the same manner as the products found on the Complainant's website. Both websites have a black area at the top and include the trademark CORYXKENSIN in white in the same font in the black area. Also both include the same red and white wording on the left side and the right side of the page.

The Respondent is using the disputed domain name in bad faith to confuse consumers who are looking for the Complainant's goods.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name <coryxkenshin1.com> is confusingly similar and almost identical with the Complainant's CORYXKENSIN trademark.

The disputed domain name incorporates the Complainant's trademark CORYXKENSIN in its entirety with the addition of the number "1", which certainly does not prevent a finding of confusing similarity.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark CORYXKENSIN in which the Complainant has registered and unregistered rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trade name and trademark CORYXKENSHIN when it registered the disputed domain name on December 14, 2021.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant’s trademark CORYXKENSHIN with the addition of the number “1” with intention to confuse Internet users and lead them to think that the relevant website -which has a similar layout to the Complainant’s website- belongs to the Complainant and thereby capitalize on the fame of the Complainant’s name and trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith, as stated in section 3.2.1 of [WIPO Overview 3.0](#).

Furthermore, as pointed out by the Complainant, in *CoryxKeshing v. minh pham Cardinal*, WIPO Case No. [D2021-3789](#), the Panel ordered the transfer of the disputed domain name <cory-kenshin.com> to the Complainant. Thus, the present case is not the first time in which the Respondent has tried to take a free ride on the good-will attached to the Complainant’s name and trademark.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <coryxkenshin1.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: September 22, 2021