

ADMINISTRATIVE PANEL DECISION

KORIAN v. Domain Admin, Xedoc Holding SA
Case No. D2023-2888

1. The Parties

The Complainant is KORIAN, France, represented by Scan Avocats AARPI, France.

The Respondent is Domain Admin, Xedoc Holding SA, United States of America (“United States”), represented by Law.es, Spain.

2. The Domain Name and Registrar

The disputed domain name <koriansex.com> is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 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 (Jewella Privacy - 5B19C, Jewella Privacy LLC Privacy ID# 924165) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 14, 2023 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 July 17, 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 the Respondent of the Complaint, and the proceedings commenced on July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 12, 2023. The Response was filed with the Center on August 11, 2023. The Complainant submitted a supplemental filing on August 18, 2023.

The Center appointed Willem J.H. Leppink, Flip Jan Claude Petillion, and Georges Nahitchevansky as panelists in this matter on September 15, 2023. The Panel finds that it was properly constituted. Each member of 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.

On September 16, 2023, the Respondent submitted a supplemental filing in response to the Complainant's filing.

On September 25, 2023, the Complainant submitted a second supplemental filing in response to the Respondent's supplemental filing.

On September 30, 2023, the Respondent submitted a second supplemental filing.

On October 2, 2023, the Complainant submitted a third supplemental filing.

4. Factual Background

The following relevant facts are undisputed.

The Complainant, Korian, is a company incorporated in France. It was established in 2003 when four companies merged (Fingest, SérIENCE, Réacti-Malt, and Medidep) and is now a leading company in Europe that provides care services to the elderly and the vulnerable, notably through the management of retirement homes and specialized clinics. The Complainant is serving more than 300,000 patients or residents and employs more than 50,000 people in Europe.

The Complainant is the exclusive owner of several KORIAN marks worldwide, including European Union trademark registration for KORIAN (word mark) registered on August 29, 2007 and filed on July 11, 2006, for goods and services in classes 16, 35, 36, 38, 39, 41, 43 and 44, registration number 005192224 (the "Trademark").

The Complainant is also the owner of various domain names that it uses for its activities that include the element "korian", such as <korian.com> and <korian.fr> (since November 2008).

The disputed domain name was originally registered on October 27, 2004 and was acquired by the Respondent as current registrant in January of 2008. The disputed domain name resolves to adult content.

5. Parties' Contentions

A. Complainant

The Complainant has submitted an extensive Complaint. To the extent relevant for rendering this decision the Complainant contends the following.

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

Notably, the name "KORIAN" must be considered as an unregistered trademark. "KORIAN" is the registered company name of the Complainant since October 22, 2004. The registration of the company name "KORIAN" is therefore registered prior to the disputed domain name and this name has been used by the Complainant in the course of business ever since. The Complainant also claims rights in the domain name <korian.com>, registered in 1999.

The Complainant's "KORIAN" company name, trademarks and domain name are well-known in Europe and are used to promote its activities on its websites.

The disputed domain name is confusingly similar to the Complainant's company name, domain name, and registered trademarks, including the Trademark.

The Complainant has never given any authorization or permission to the Respondent to register or to use its company name, domain name and trademarks. The Respondent is not in any way related to the Complainant's business, is not one of its distributors and does not carry out any activity for or has any

business with them. The Respondent is not commonly known under the disputed domain name. The disputed domain name is not used to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use, certainly not while using the disputed domain name to provide access to pornographic content.

Any search for “KORIAN” conducted with a search engine such as Google leads in the first place to websites relating to the Complainant and its activities. The Whois history of the disputed domain name shows that it has changed registrant in recent years so that there are all the reasons to believe that the Respondent was not the owner of the disputed domain name when it was registered in 2004. The Respondent could not have been unaware of the Complainant’s prior company name “KORIAN”, domain name <korian.com>, nor its registered trademarks, when it registered and used the disputed domain name in view of the renown of these signs and the distinctiveness of the arbitrary denomination “KORIAN”.

In addition, in its supplemental filing, to the extent relevant for deciding this case, the Complainant contended the following:

At the time of the alleged purchase by the Respondent in February 1, 2008 as a part of an adult domain name portfolio, the Complainant was already the owner of several trademark registrations and had rights in its company name. The rights to the company thus predate the registration of the disputed domain name by almost four years.

The transfer of the disputed domain name from a third party to the Respondent is not a renewal and the date on which the Respondent as current registrant acquired the disputed domain name is the date a panel should consider in assessing bad faith.

Furthermore, the Complainant was already a leader in its field of activity in Europe in 2008, as confirmed by several articles published online at the time.

The Respondent is located in Luxembourg, Europe. Thus, it is likely that the Respondent could not have been unaware of the Complainant’s rapid success between 2004 and 2008 in neighboring countries such as France, Belgium and Germany, where the Complainant has been established since 2005 (Annex K).

The Respondent should have conducted a prior search when purchasing the disputed domain name, even more so considering the fact that the Respondent is a professional whose business is to purchase domain names. The Respondent has also been involved in several disputes under the Policy.

The Respondent’s allegations in its Response, that “Korian is a Common Typo of KorEan” and that “Korian is also a family name” are not relevant since they do not prove that “KORIAN” is a common name and is therefore free of use, particularly for commercial purposes. KORIAN is an arbitrary term. In addition, the Benelux Office for Intellectual Property (BOIP) stated that “KORIAN” cannot be considered descriptive or as having any particular meaning. Thus, the sign KORIAN is highly distinctive and has no meaning.

There is no evidence to prove that the Respondent intended to carry on any legitimate business under the disputed domain name since its acquisition in 2008. The disputed domain name has always been used to redirect users to another domain name which resolved to a pornographic website where the sign “Korian” (or “Korean”) is never mentioned. In its response, the Respondent claims that the disputed domain name is “intended to function both as an attraction to Asian people, seeking adult content and as a portal to adult content that contains models or themes having an Asian look.” However, there is no reference to the Republic of Korea or Korean people on this website, which targets the French public. Most of all, the pages of the website are in French language, which demonstrates that the Respondent is willing to target the French public – which is the core country of interest for the Complainant’s primary business.

B. Respondent

The Respondent has extensively replied to the Complaint. To the extent relevant for rendering this decision and to the extent not yet discussed under the Complainant’s contentions under 5.A, the Respondent contends the following.

Korian is a common typo of KorEan. Korian is not a unique or coined term associated only with the Complainant. Evidence that Korian is a known typographical error of KorEan is established by reference to current and historical Google searches. When entering “Korian” in a Google search box, Google responds with suggestions for “Koriander”, Korean”, Korean Air”, Korean war” and Korean restaurant near me. The same type of suggestions appear when entering KorianSex, Korian Sex, or “Korian Sex” in a Google search box. Continuing to the search results the question is posed by Google: “Did you mean: korean sex?”. The term is popular. A current Google search for Korian+Sex generates over 1.2 billion results for sexual content related to the term “KorEan”. A reference to the exact phrase “Korian Sex” generates over 154,000 results and a search for the exact phrase “KorianSex” generates over 160,000 results. There are no references to the Complainant. The results are substantially similar for historical Google searches. For example, a historical Google search limited to the period 2004 results in only references to sexual content. Similarly, a historical Google search limited to the period up to as late as 2009 results in only references to sexual content. Google searches for “Korian History” show results only for “KorEan History”.

“Korian” is also a family name. The domain name <korian.com> was first registered by Peter Korian, a resident of New, York, in 1999. It was sold to the Complainant in 2015 – well after the disputed domain name was registered. The first historical WhoIs information for the disputed domain name lists Korian Medica SA as registrant. There are also Internet references to several people with Korian as their last name. Paul Korian was a founder of Staples and Charles Korian is a famous Hollywood set designer. <korian.ru> resolves to a Russian website specializing in “Corian” countertops. <korian.jp> resolves to a Japanese website for a hotel. The domain name <korian.com> was apparently sold to Godaddy in 2014 and then to the Complainant in 2015.

The Respondent acquired the disputed domain name on February 1, 2008 as a part of an adult domain name portfolio. The domain names purchased are all adult oriented and most of these incorporated the name of a country (e.g. China, India, Korea, etc) or geographical location (Asian, beach, etc), plus sex or similar descriptive terms. None of the domain names contained known or obvious trademark connotations. Many of the domain names included common typographical errors.

The Respondent was not aware of the Complainant or its asserted trademark in January 2008 when it acquired the disputed domain name. The Respondent did not become aware of the Complainant or its trademark until receipt of the Complaint.

The Complainant has provided no evidence showing it held common law trademark rights – or was even well-known – so as to have placed the Respondent on notice as of January 2008.

The Complainant provides no evidence that it was well known as of October 2004 such that the original registration of the disputed domain name several days later would have been improper. The corporate registry is provided only in French (the Respondent had no employees that speak or read French). There is no evidence that the French registry was widely published or that it was it was known (or should have been known) by Respondent in January 2008 when it acquired the disputed domain name.

The disputed domain name has always been used to provide adult images – a use consistent with its intended purpose as a common typographical error of “KoreanSex”. The Respondent held the disputed domain name – and used it for adult content – for over 15 years. The Complainant has never objected.

The fact that the Complainant held a registered trademark that pre-dated the Respondent’s acquisition of the disputed domain name does not preclude the Respondent from having rights or legitimate interests in the disputed domain name. The Respondent denies that it specifically targets the French public as the language of the website linked to the disputed domain name depends on the location of the Internet user.

The Complainant’s assertion that the Respondent knew that the Complainant existed when the disputed domain name was registered is not supported by evidence. The mere registration of “Korian” as a company name in France is not evidence that the Respondent knew of the Complainant or its asserted intellectual property rights. In addition, any rights granted by the registration of a company name are limited to the jurisdiction in which the registration occurred. There is no evidence that such registration was publicized anywhere, let alone in Luxembourg where the Respondent is located. The Complainant must show

evidence that the Complainant and its mark were so well known to the general public during the relevant period (prior to 2008) as to make the Respondent's claim of ignorance completely unsustainable. The Complainant's evidence regarding its stature and renown in several annexes relates to 2016 and later – well after the disputed domain name was registered. The Complainant's assertion that it and its trademarks are "famous or well known" is not supported by any actual evidence of fame or notoriety at any time relevant to the disputed domain name registration.

6. Discussion and Findings

6.1 Preliminary Matter

Before entering into the merits of the case, the Panel addresses the matter of the unsolicited supplemental filings submitted by the Complainant and the Respondent. No provision concerning supplemental filings is made in the Rules or Supplemental Rules, except for paragraphs 10 and 12 of the Rules, from which it follows that the panel, in its sole discretion, may determine the admissibility, relevance, materiality, and weight of the evidence, insofar as both parties are treated with equality and are given a fair opportunity to present their case.

Both the Complainant and the Respondent submitted unsolicited supplemental filings which is generally discouraged, as is described in section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

However, when the complainant proves that the supplemental filing is of utmost importance to the case and it could not have provided the information within its prior complaint panels may find it justified to accept an unsolicited supplemental filing. The respondent will then be allowed to respond the complainant's unsolicited filing.

The Panel finds that it is doubtful whether the Complainant could not have provided all the information with its Complaint. As a general principle, a complainant has "one bite at the apple" and the Complainant could have easily foreseen at least some of the defenses as raised by the Respondent.

As perhaps a few points in the Response by the Respondent could not have been foreseen by the Complainant, the Panel decides for practical reasons to accept the Complainant's first supplemental filing and the Respondent's first supplemental filing. However, the Panel rejects the Parties' subsequent supplemental filings.

In the context of this preliminary matter the Parties are both reminded that it is essential for the success of the alternative dispute resolution embodied in the Policy that proceedings are kept as efficient as possible. In the Panel's view, both Parties have not contributed to this, by submitting overly lengthy submissions, including endless repetitions of their arguments.

6.2 Substantive matter

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (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.

A. Identical or Confusingly Similar

The first element mainly serves as a standing requirement. For the purposes of this element, it is unnecessary to make an assessment of all the different rights the Complainant is asserting.

The Complainant has sufficiently proven to have rights in the Trademark.

The Trademark is fully integrated in the disputed domain name. The element “korian” stands out in the disputed domain name. Only the word element “sex” was added.

As set out in the [WIPO Overview 3.0](#), section 1.8, the addition of other terms would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element. The Trademark is clearly recognizable in the disputed domain name. The addition of the term “sex” does not prevent a finding of confusing similarity between the disputed domain name and the Trademark. As a result, the disputed domain name is confusingly similar to the Trademark.

The Panel, therefore, finds that the first element has been satisfied.

B. Rights or Legitimate Interests

In light of its assessment of the third element, the Panel does not discuss the second element.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

The Panel has carefully considered all the factual assertions made by the Complainant and the Respondent as well as the evidence submitted.

As the basis for its decision, the Panel considers that the disputed domain name was registered in January of 2008. At that time the Respondent certifies it acquired the disputed domain name as part of a portfolio of adult related domain names.¹ The date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. This is relevant for single domain name acquisitions as well as for portfolio acquisitions. See [WIPO Overview 3.0](#), under section 3.9.

The most senior registered trademarks for the word mark KORIAN that the Complainant relies on date back to 2006. The Complainant also asserts unregistered rights related to the registration of its company name in France in 2004. However, the Complainant has failed to substantiate (i) on which legal basis it would have obtained such unregistered right, (ii) the nature and extent of these rights (e.g., common law trademark right or trade name rights), (iii) when such rights came into existence (e.g., at the time of the company registration or on a date after a certain amount of actual use), (iv) the scope and extent of the use (e.g., whether this would extend beyond France and when such use occurred), or (v) when the Complainant’s KORIAN mark actually achieved the notoriety the Complainant now claims exists in 2023.

The Complainant also claims rights in the domain name <korian.com>, registered in 1999. However, according to undisputed evidence provided by the Respondent, the Complainant acquired this domain name in 2015, well after the Respondent’s acquisition of the disputed domain name.

In summary, the Panel finds that the Complainant has failed to provide conclusive evidence that the Respondent targeted the Complainant or its KORIAN mark and thus registered the disputed domain name in bad faith.

Although it can be accepted that the Complainant is well-known in its field, it did not provide sufficient evidence that this was the case in 2008 when the disputed domain name was acquired (and thus registered). The Complainant’s supplemental filing includes some articles regarding the growth of the Korian Group, and some internal documents, but it did not provide evidence of trademark use in the relevant period up to early 2008. The evidence included some limited financial industry and internal comments on the parent group’s

¹ The Panel notes that from what evidence is before the Panel, it appears that the disputed domain name was registered and owned by the Respondent as of January 2008. Whether such was acquired or registered by the Respondent at that time does not change the relevant date when the Respondent obtained the disputed domain name, as the evidence shows that the disputed domain name was originally registered by another party in 2004 until the Respondent became the registrant in 2008. The Complainant does not contest this point.

growth, but without information on what marks the group was using for its actual facilities. It is not clear when the Complainant's reputation in its trademark rose to a level justifying an assumption that it is implausible for the Respondent to have registered the disputed domain name without having the Complainant and its trademarks in mind.

While it is true that the Respondent seems to be a professional domain name reseller, which may imply some good-faith effort to avoid registering and using domain names corresponding to trademarks, this does not mean that the registration of the disputed domain name would automatically be considered to be in bad faith ([WIPO Overview 3.0](#), Section 3.2.3). In light of the extensive evidence submitted by the Respondent, in particular that the disputed domain name was acquired as part of a portfolio of adult related domain names, it seems more plausible that the Respondent registered the disputed domain name as a typo version of the term "korean sex", than having the Complainant's KORIAN trademark in mind.

Although the Panel recognizes that laches is not part of the Policy, the Panel notes, that it is somewhat surprising that this proceeding is brought some 15 years after the registration of the disputed domain name and 19 years after the original registration. The Respondent has provided evidence that the disputed domain name has been used with adult content for many years. If the use of the disputed domain name was such an issue to the Complainant, one would think that the Complainant would have mustered much more evidence to show its notoriety over the years as opposed to mostly relying on post 2019 evidence. Waiting this long has certainly not helped the Complainant to meet its burden of proof.

There are also no additional circumstances following from the use the Respondent has made of the disputed domain name, that would lead to any assumption that the Respondent sought to exploit the claimed notoriety of Korian (e.g., with links that conjured up the Complainant or its services). In the Panel's view, the fact that the website linked to the disputed domain name is also available in French (in addition to other languages) is insufficient to show any targeting of the Complainant by the Respondent.

As the Complainant failed to establish the requirement that the Respondent registered the disputed domain name in bad faith, there is no need to further discuss whether the Respondent used the disputed domain name in bad faith.

The Panel, therefore, finds that the third element has not been satisfied.

7. Reverse Domain Name Hijacking

The Respondent has requested a finding of Reverse Domain Name Hijacking (RDNH).

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking (RDNH) or was brought primarily to harass the domain name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

RDNH is furthermore defined under the Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name." (see [WIPO Overview 3.0](#), section 4.16).

Panels have consistently found that the mere lack of success of a complaint is not in itself sufficient for a finding of RDNH.

Even though the Complainant took liberties with some facts by relying on the initial registration date of its own <korian.com> domain name instead of the date of acquisition of this domain name (1999 instead of 2015), the Panel finds that without knowing the Response and the evidence provided by the Respondent, the Complainant had an arguable case. In particular, the Complainant was not aware that in 2008 the Respondent purchased the disputed domain name as part of a portfolio of adult related domain names containing the name of a country or geographical location plus "sex" or similar descriptive terms and that many of these domain names included common typographical errors.

Therefore, the Panel is unable to conclude that the Complaint was brought primarily to harass the Respondent, nor that the proceeding was commenced in bad faith (both in general in accordance with paragraph 15(e) of the Rules, and in accordance with RDNH as defined under the Rules).

The Panel therefore declines to declare that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Willem J.H. Leppink/

Willem J.H. Leppink

Presiding Panelist

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Panelist

/Georges Nahitchevansky/

Georges Nahitchevansky

Panelist

Date: October 3, 2023