

## **ADMINISTRATIVE PANEL DECISION**

COFRA Holding AG/C&A AG v. Client Care, Web Commerce  
Communications Limited  
Case No. D2023-3755

### **1. The Parties**

The Complainant is COFRA Holding AG/C&A AG, Switzerland, represented by Ports Group AB, Sweden.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

### **2. The Domain Name and Registrar**

The disputed domain name <c-and-a-hungary.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 8, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 13, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 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 amendment to the Complaint on September 13, 2023.

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 September 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 4, 2023.

The Center appointed Elise Dufour as the sole panelist in this matter on October 20, 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

The Complainant is COFRA Holding AG/C&A AG, a privately held company incorporated in Zug, Switzerland. The Complainant operates globally, especially within the fashion industry.

The Complainant has been trading under the name C&A since the beginning of its business operations, starting in the early 19th century.

The Complainant is the owner of a large number of trademarks consisting of or including the sign “C&A” in Europe and abroad, *inter alia*:

- C&A European Union trademark No. 018452270 registered on August 13, 2021 ;
- C&A European Union trademark No. 015738545 registered on April 19, 2017;
- C&A European Union trademark No. 009900713 registered on September 19, 2011.

The Complainant uses these trademarks as domain names to promote its activities, *inter alia*:

- <c-and-a.com> registered on January 23, 1996.

The disputed domain name was registered on March 2, 2023.

At the time of the filing of the Complaint, the disputed domain name does not resolve to an active website. At the time of the drafting of the decision, the disputed domain name generated the following browser warning: *“Etat du site web: Suspect http://c-and-a-hungary.com/ Ce site nous paraît un peu risqué alors nous l'avons signalé par précaution. Assurez-vous d'avoir confiance en ce site avant de continuer. Mieux vaut prévenir que guérir !.”* which means in English: Website status: Suspect http://c-and-a-hungary.com/ This site seems a bit risky to us, so we've flagged it up as a precaution. Make sure you trust this site before continuing. Better safe than sorry!).“

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that (i) the disputed domain name is confusingly similar to the Complainant's trademarks; (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and (iii) the Respondent registered and is using the disputed domain name in bad faith.

(i) The Complainant claims that the disputed domain name substantially imitates the Complainant's trademark C&A. Indeed, for the Complainant, the disputed domain name and the Complainant's trademark coincide in the string of letters “C-& (AND)-A”, the only difference being the added word “and”, instead of an “&”, and the added ending consisting of the word (the country name) “hungary”, which, for the Complainant, does not have any decisive impact on the visual and conceptual similarity between the Complainant's trademark and the disputed domain name. The Complainant highlights that the wording “C&A” is the sole element of the Complainant's trademark. For the Complainant, the disputed domain name should hence be considered as confusingly similar to the Complainant's trademark C&A.

(ii) The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name, the Respondent has not used, or prepared to use, the disputed domain name in connection with a *bona fide* offering of goods and/or services or for any legitimate noncommercial or fair purpose. The Complainant highlights that, when searching for the disputed domain name on Google, an impression was given that the disputed domain name was linked to a legitimate website, providing information about the site in both English and in Hungarian, referring to the Complainant's company. Finally, the Respondent did not reply to the cease-and-desist letter, despite several reminders.

(iii) The Complainant states that it has been using its the trademark C&A since the early 19<sup>th</sup> century. Consequently, the Complainant considers that the Respondent could not have ignored the existence of the Complainant's trademark at the time the disputed domain name was registered. In addition, the Complainant stresses that the disputed domain name used to direct to a website referring to the Complainant.

As per the use of the disputed domain name, for the Complainant, the passive holding of the disputed domain name by the Respondent constitutes bad faith.

For the Complainant, the combined following circumstances implies that the passive use of the disputed domain name should be considered as bad faith use: (i) the use of a confusingly similar domain name linked to the Complainant shows the Respondent's intention to capitalize and take advantage of the Complainant's trademark rights and that the disputed domain name is confusingly similar to the Complainant's registered rights showing that the Respondent's intention to take advantage of the C&A trademarks or at the very least inflict damage on the Complainant's business.

## **B. Respondent**

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

## **6. Discussion and Findings**

In the absence of any response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

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 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 was registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

### **A. Identical or Confusingly Similar**

The Panel finds that disputed domain name is confusingly similar to the Complainant's registered trademarks C&A. Indeed, the disputed domain name imitates the Complainant's trademark, the only difference being the use of the word "and", instead of an "&", and the added ending consisting of the term "hungary".

Further, an ampersand is an invalid character in a domain name. In addition, an ampersand and the term “and” both having the same meaning, and the conversion of this character in the disputed domain name should not prevent confusing similarity. See, e.g., *BA&SH v. Domain Administrator, See PrivacyGuardian.org / Name Redacted*, WIPO Case No. [D2019-3201](#).

Finally, it has been established by numerous prior UDRP panel decisions that the combination of a trademark with an additional term does not avoid a likelihood of confusion. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The burden of proof is on the Complainant to demonstrate a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a *prima facie* case, the burden of production then shifts to the Respondent, which has then to demonstrate rights or legitimate interests in the disputed domain name.

On the basis of the submitted evidence, the Panel considers that the Complainant has successfully established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name: the Respondent is not commonly known under the disputed domain name, nor owns any registered rights on the disputed domain name or has been authorized by the Complainant to use the prior trademarks in any way.

The passive holding of the disputed domain name in these circumstances is not a legitimate noncommercial or fair use within paragraph 4(c)(iii) of the Policy. There is no contrary evidence from the Respondent showing that it is making use of or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services within paragraph 4(c)(i) of the Policy.

Moreover, the Complainant has adduced evidence to show that when searching for the disputed domain name on Google, an impression was given that the disputed domain name was linked to a legitimate website, providing information about the site in both English and in Hungarian, referring to the Complainant’s company. The Panel considers that the composition of the disputed domain name, including the Complainant’s trademark and the geographical term “hungary”, carries a risk of implied affiliation with the Complainant.

Given such evidence and the absence of contrary evidence from the Respondent, the Panel considers that it is not possible for the Respondent to establish that it has rights or legitimate interests in the disputed domain name.

The Panel therefore finds, noting the Complainant’s *prima facie* arguments and the absence of a response from the Respondent to the Complainant’s allegations, that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Given the long-term existence of the Complainant’s C&A trademark, the Panel considers that the Respondent knew or should have known of said trademarks at the time of the registration of the disputed domain name. Noting the circumstances of the case, such knowledge is sufficient to establish that the disputed domain name was registered in bad faith.

With respect to the use of the disputed domain name, the passive holding of the disputed domain name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

The factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *Ladbroke's Betting & Gaming Limited v. Mehdi Bouksila*, WIPO Case No. [D2021-3381](#).

Applying the factors set out above to the current circumstances: (i) the Complainant has established that its C&A trademark is known since many years; (ii) the Respondent has not replied to the Complainant's cease-and-desist letter or to the Complaint; (iii) the disputed domain name does not resolve to an active website and (iv) the fact that the disputed domain name currently generates browser security warnings, (v) there is no plausible good faith use to which the disputed domain name could be put by the Respondent.

Accordingly, the circumstances support a finding of bad faith use of the disputed domain name under the doctrine of passive holding.

In these circumstances the Panel finds that the disputed domain name was registered and is being used in bad faith within paragraph 4(a)(iii) 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 <c-and-a-hungary.com> be transferred to the Complainant.

*/Elise Dufour/*

**Elise Dufour**

Sole Panelist

Date: 3 November 2023