

ADMINISTRATIVE PANEL DECISION

COFRA Holding AG, C&A AG. v. Web Commerce Communications Limited,
Client Care
Case No. D2023-4625

1. The Parties

Complainant is COFRA Holding AG, C&A AG., Switzerland, represented by Abion AB, Sweden.

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

2. The Domain Names and Registrar

The disputed domain names <c-and-a-argentina.com>, <c-and-a-australia.com>, <c-and-a-belgie.com>, <c-and-a-canada.com>, <c-and-a-chile.com>, <c-and-a-deutschland.com>, <c-and-a-espana.com>, <c-and-a-france.com>, <c-and-a-greece.com>, <c-and-a-hrvatska.com>, <c-and-a-india.com>, <c-and-a-ireland.com>, <c-and-a-italia.com>, <c-and-a-malaysia.com>, <c-and-a-mexico.com>, <c-and-a-nederland.com>, <c-and-a-norge.com>, <c-and-a-outlet.com>, <c-and-a-peru.com>, <c-and-a-philippines.com>, <c-and-a-portugal.com>, <c-and-a-romania.com>, <c-and-a-schweiz.com>, <c-and-a-singapore.com>, <c-and-a-slovenija.com>, <c-and-a-southafrica.com>, <c-and-a-suomi.com>, <c-and-a-tr.com>, <c-and-a-uae.com>, <c-and-a-uk.com>, and <c-and-a-usa.com> are 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 November 2, 2023. On November 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Not available from registry) and contact information in the Complaint. The Center sent an email communication to Complainant on November 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 23, 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 Respondent of the Complaint, and the proceedings commenced on December 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 4, 2024.

The Center appointed Phillip V. Marano as the sole panelist in this matter on January 23, 2024. 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 privately held group of companies incorporated in Switzerland that inter alia operates a multinational chain of retail clothing stores. Complainant offers its goods and services through its official <c-and-a.com> domain name and website. Complainant owns valid and subsisting registrations for the C&A trademark in numerous countries, including the trademark for C&A (Reg. No. 000105882) in the European Union, registered on May 17, 1999.

Respondent registered the disputed domain names in a few batches on either February 28, 2023, March 1-2, 2023, or June 26, 2023. At the time this Complaint was filed, 17 disputed domain names did not resolve to any active website content, whereas 14 disputed domain names resolved to identical website content with putative offers to sell C&A branded clothing.

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 names.

Complainant asserts ownership of the C&A trademark and has adduced evidence of trademark registrations in numerous regions and countries around the world including in the European Union, Malaysia, and the United States of America, with earliest priority dating back to at least May 17, 1999. The disputed domain names are confusingly similar to Complainant's C&A trademark, according to Complainant, because each one contains the wording "c-and-a" which substantially imitates the Complainant's C&A trademark (with the word "and" in place of the ampersand symbol) followed by word either indicating geographic origin (e.g., "c-and-a-argentina") or distribution channels (e.g., "c-and-a-outlet"). These added endings lead the public to believe Respondent's websites are Complainant's authorized websites or are websites for Complainant's national stores.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain names based on: the lack of any license or permission between Complainant and Respondent; the lack of any evidence that Respondent is known by the phrase "c-and-a"; Respondent's use of the disputed domain names in connection with Respondent's pay-per-click websites, which claim to sell Complainant's C&A branded products; and Respondent's failure to reply to Complainant's cease and desist correspondence.

Complainant argues that Respondent has registered and used the disputed domain names in bad faith for numerous reasons, including: Complainant's use of its C&A trademark long before Respondent registered the disputed domain names; Respondent's intentional targeting and unauthorized use of Complainant's C&A trademark in the disputed domain names to redirect the public to Respondent's pay-per-click websites; the highly distinctive and well-known nature of Complainant's C&A trademark; Respondent's passive holding of the disputed domain names; and Respondent's attempts to conceal its identity.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain names are identical or confusingly similar to a trademark in which Complainant has rights;
- ii. Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- iii. The disputed domain names have been registered and are being used in bad faith.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

Consolidation: Multiple Respondents

In its original Complaint, Complainant alleged that the domain name registrants are all under common control. Complainant preemptively requested the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

Upon review, the Panel deems consolidation unnecessary under the circumstances. Indeed, the Center's email communication to the Complainant on November 22, 2023, provided the registrant and contact information disclosed by the Registrar. It confirmed that the identical point of contact, "Web Commerce Communications Limited, Client Care", was the registrant for all the disputed domain names. In its amendment to the Complaint, the Complainant requested the addition of the Registrar-disclosed registrant information to the Complaint. Accordingly, the Complaint, as amended, identifies the single Respondent as the registrant for all disputed domain names.

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as prima facie evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the C&A trademark has been registered in numerous regions and countries with priority dating back to at least as early as May 17, 1999. Thus, the Panel finds that Complainant's rights in the C&A trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to Complainant's C&A trademark. In this Complaint, the disputed domain names are confusingly similar to Complainant's C&A trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the entirety of the trademark is contained within each of the disputed domain names. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the

domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar...”). In regards to gTLDs, such as “.com” in the disputed domain names, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with additional terms like “Argentina”, “Australia”, “Belgie”, “Schweiz”, “Suomi”, “TR”, “UAE” or other terms like “outlet” does not prevent a finding of confusing similarity between Complainant’s C&A trademark and each of the disputed domain names. [WIPO Overview 3.0](#), section 1.8 (Additional terms “(whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) (“Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant’s [ATT trademark]”); see also *Ashfords LLP v. Hioo Uoehojf*, WIPO Case No. [D2020-1579](#) (August 17, 2020) (finding that the addition of a corporate identifier does not prevent a disputed domain name from being confusingly similar to complainant’s trademark).

In addition, it is well established that neither the mere addition or removal of a hyphen is sufficient to dispel confusing similarity. See *Chernow Comm’ns, Inc. v. Kimball*, WIPO Case No. [D2000-0119](#) (May 18, 2000) (holding “that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark”). And, substitution of the word “and” for the ampersand in a trademark does not negate the confusing similarity of a disputed domain name to that trademark, because the ampersand symbol means “and”. See e.g., *L’Oréal v. PPA Media Services, Ryan G Foo / Fundacion Private Whois, Domain Administrator*, WIPO Case No. [D2013-2230](#), citing *In Cox & Kings Ltd. v. Mr. Manoj*, WIPO Case No. [D2011-0349](#).

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as “Web Commerce Communications Limited, Client Care”, is not commonly known by the disputed domain name or Complainant’s C&A trademark.

Contrary to Complainant’s allegations, the Panel has not seen any evidence to indicate that Respondent has monetized any of the 14 disputed domain names that resolve to website content with pay-per-click hyperlinks. Rather, the Panel’s limited investigation into Respondent’s websites¹, which was initially blocked by malware warnings, confirmed Complainant’s allegations that Respondent’s websites (i) prominently feature Complainant’s C&A trademark within the website heading and (ii) is replete with offers to sell putatively authentic C&A branded clothing. The Panel also observed that Internet users visiting Respondent’s websites are required to register by submitting personal contact information. Thus, based on the on the evidence available to the Panel, it is apparent that the disputed domain names intentionally target

¹ Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

Complainant, and that Respondent's websites attempt to impersonate Complainant or pass Respondent and its putative products off being associated with Complainant. In the Panel's view, such impersonation of Complainant is likely in furtherance of some underlying fraudulent or abusive conduct, such as the sale of counterfeit goods or phishing for login credentials or other personal data belonging to visitors. UDRP panels have categorically held that use of a domain name for illegal activity - including the impersonation of the complainant and other types of fraud - can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent's website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13.

With respect to the disputed domain names that appear passively held because they do not resolve to any website content, the Panel largely considers them as part of Respondent's same pattern of targeting Complainant. Nevertheless, passively holding a domain name in and of itself does not constitute a bona fide offering of goods or services, or a legitimate use of a domain name. *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#); *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#) (“[A]bsent some contrary evidence from Respondent, passive holding of a Domain Name does not constitute “legitimate noncommercial or fair use””). In this Complaint, 17 disputed domain names appear not to have resolved to any active website content since they were registered nearly one year ago in 2023. They instead generate web browser error messages stating, “This site can't be reached [because it] took too long to respond.”

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

UDRP panels have categorically held that registration and use of a domain name for illegal activity - including impersonation, fraud, and distribution of malware - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. See also *Carvana, LLC v. Domain Privacy, Above.com Domain Privacy*, WIPO Case No. [D2021-0290](#) (“Using a disputed domain name to disseminate malware indicates bad faith *per se.*”); *International Business Machines Corporation v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-0633](#) (“Using the Domain Name to disseminate malware indicates bad faith and constitutes

a disruption of the Complainant's business."); *Instagram, LLC v. Hannes Stiller*, WIPO Case No. [D2023-1436](#) ("[T]he disputed domain name is listed on one or more blacklists indicating that it had previously been used in connection with spam, malware, or other domain name abuse activities, which confirms the bad faith use.") citing *Instagram, LLC v. Yusuf Polat, Schowix*, WIPO Case No. [D2021-2791](#). As discussed above, Complainant's evidence and the Panel's limited investigation into Respondent's websites, which was initially blocked by malware warnings, confirmed that they (i) prominently feature Complainant's C&A trademark (ii) are replete with offers to sell putatively authentic C&A branded clothing; and (iii) require Internet users visiting said websites to register by submitting personal contact information.

Again, the Panel largely considers the 17 disputed domain names that do not resolve to any website content as merely further composing part of Respondent's same pattern of targeting Complainant and Complainant's C&A trademark in bad faith. Nevertheless, to the extent they are passively held, the Panel acknowledges the extensive portfolio of trademark registrations proffered by Complainant as evidence to support the widely known nature of its C&A trademark. The mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (particularly where no conceivable good faith use could be made). [WIPO Overview 3.0](#), Section 3.1.4. Indeed, where domain names are being passively held, as alleged in this case, bad faith registration and use exists based upon: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit any response or offer any credible evidence of rights or legitimate interests; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use which the domain name may be put. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("A remedy can be obtained under the Policy only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith."). In the Panel's view, Complainant's extensive portfolio of worldwide trademark registrations for Complainant's C&A trademark, plus Complainant's official <c-and-a.com> domain name and website, make any good faith use of the disputed domain names relatively implausible. Furthermore, the Panel acknowledges Respondent's failure to respond or offer any credible evidence of rights or legitimate interests. And finally, the Panel acknowledges Respondent's either intentional or default use of a proxy registration service, thus concealing its identity from Complainant.

Where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant, or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. [WIPO Overview 3.0](#) section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with its attempts to impersonate Complainant via Respondent's websites. Lastly, it would appear that the totality of the circumstances in this proceeding serve as further reinforcement of this Respondent's pattern of bad faith registration and use of domain names containing third party trademarks. See, for example, *Skims Body, Inc. v. Web Commerce Communications Limited, Client Care*, WIPO Case No. [D2023-4777](#), and *Playboy Enterprises International, Inc. v. Web Commerce Communications Limited, Client Care*, WIPO Case No. [D2022-4597](#).

The Panel further concludes that failure by Respondent to answer Complainant's multiple cease and desist letters "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith." See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the

Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

In view of the foregoing, the Panel concludes that Complainant has established the third 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 names <c-and-a-argentina.com>, <c-and-a-australia.com>, <c-and-a-belgie.com>, <c-and-a-canada.com>, <c-and-a-chile.com>, <c-and-a-deutschland.com>, <c-and-a-espana.com>, <c-and-a-france.com>, <c-and-a-greece.com>, <c-and-a-hrvatska.com>, <c-and-a-india.com>, <c-and-a-ireland.com>, <c-and-a-italia.com>, <c-and-a-malaysia.com>, <c-and-a-mexico.com>, <c-and-a-nederland.com>, <c-and-a-norge.com>, <c-and-a-outlet.com>, <c-and-a-peru.com>, <c-and-a-philippines.com>, <c-and-a-portugal.com>, <c-and-a-romania.com>, <c-and-a-schweiz.com>, <c-and-a-singapore.com>, <c-and-a-slovenija.com>, <c-and-a-southafrica.com>, <c-and-a-suomi.com>, <c-and-a-tr.com>, <c-and-a-uae.com>, <c-and-a-uk.com>, and <c-and-a-usa.com> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: February 13, 2024