

ADMINISTRATIVE PANEL DECISION

COFRA Holding AG / C&A AG v. Web Commerce Communications Limited
Case No. D2023-4972

1. The Parties

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

The Respondent is Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <c-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 November 29, 2023. On November 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Not available from registry) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 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 December 1, 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 December 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 5, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on January 17, 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

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 has a large international trademark portfolio for the C&A marks in different jurisdictions, including European Union Trademark Registration number 009900713 for C&A, registration date September 19, 2011; European Union Trademark Registration number 002840940 for C&A, registration date November 24, 2003 and United Kingdom Trademark Registration number UK00915738545 for C&A, registration date April 19, 2017. The Complainant also has a strong online presence and is the owner of various domain names including the abovementioned marks, including <C-AND-A.COM>, registered on January 23, 1996.

The disputed domain name was registered on October 8, 2023 and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name has only directed to an inactive, blank webpage. Nevertheless, the Complainant points out that when searching for the disputed domain name on certain search engines, the results show the disputed domain name giving the impression that it is a legitimate link to an actual website, providing information about the website linked to the disputed domain name in both English and in Hungarian.

The Complainant also states that the Respondent did not respond to the cease-and-desist letter sent regarding the disputed domain name.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to its registered trademarks as it incorporates the C&A mark entirely (without the ampersand symbol which is not a valid sign for domain names). The Complainant also 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.

The Complainant states that it has been using its the trademark C&A since the early 19th 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 an inactive website. 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.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "-hungary" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Furthermore, the Panel notes that the disputed domain name directs to an inactive, blank webpage and that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or

services, nor any credible preparations for that purpose. In this regard, the Panel finds that holding a domain name passively, without making any use of it, does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant's well-known, intensely used and distinctive trademarks for C&A. The Panel refers to a prior decision under the Policy which has recognized the well-known nature of these trademarks, see *COFRA Holding AG v. Contact Privacy Inc. Customer 0157740153 / Wenyan Hu, CA Mode*, WIPO Case No. [D2020-1715](#). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior well-known trademarks for C&A. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." Furthermore, the Panel also notes that the Complainant's trademarks were registered several years before the registration date of the disputed domain name. The Panel deducts from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. In the Panel's view, these elements indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and strong reputation of the Complainant's trademark, the composition of the disputed domain name and the unlikelihood of any good faith use of the disputed domain name by the Respondent and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the 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 name <c-a-hungary.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: January 25, 2024