

## ADMINISTRATIVE PANEL DECISION

CW Brands LLC v. 刘鹏 (liu peng)

Case No. D2024-0029

### 1. The Parties

The Complainant is CW Brands LLC, United States of America (“United States” or “U.S.”), represented by Kaufman & Kahn, LLP, United States.

The Respondent is 刘鹏 (liu peng), China.

### 2. The Domain Name and Registrar

The disputed domain name <coldwatercreekoutlets.info> is registered with Xin Net Technology Corp. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2024. On January 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 8, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On January 10, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On January 10, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that 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 in English and Chinese of the Complaint, and the proceedings commenced on January 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2024.

The Center appointed Francine Tan as the sole panelist in this matter on February 14, 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 Complaint bases on the fact that the Complainant is the registered owner of the COLDWATER CREEK trade mark in the U.S. and in other countries including Canada, Republic of Korea, Thailand, Viet Nam, and Cambodia. The Complainant has many U.S. trade mark registrations for COLDWATER CREEK and these include the following:

- Registration No. 1531418, registered on March 21, 1989;
- Registration No. 1861320, registered on November 1, 1994; and
- Registration No. 1876534, registered on January 31, 1995.

The disputed domain name was registered on October 31, 2023, and resolves to an inactive webpage.

#### **5. Parties' Contentions**

##### **A. Complainant**

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

Notably, the Complainant contends that:

- 1) The disputed domain name is identical or confusingly similar to the Complainant's COLDWATER CREEK mark in which it has rights. The disputed domain name contains the Complainant's said trade mark and adds the word "outlets", which does not change the overall meaning and impression of the disputed domain name. Consumers would be misled to think that the Respondent uses the Complainant's COLDWATER CREEK trade mark with its consent.
- 2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by a name which corresponds to the disputed domain name. There is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name, or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name but, instead, has the intent to misleadingly divert Internet traffic away from the Complainant's own webpage and/or to tarnish the Complainant's trade mark.
- 3) The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's documented out of pocket costs for the registration of the disputed domain name. The Respondent is also attempting to attract, for commercial gain, Internet users to the Respondent's webpage or other online location by creating a likelihood of confusion with the Complainant's COLDWATER CREEK trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpage.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Procedural Issue - Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including these:

- (i) the disputed domain name contains words in the English language;
- (ii) the Complainant operates its global business in English and should not be put to the added expense of translating the Complaint if the Respondent fails to participate in the dispute process; and
- (iii) it would be inefficient to hold the proceeding in a language other than English.

The Respondent did not respond to the Center on the issue of the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The disputed domain name comprises words which are entirely in English, namely "cold", "water", "creek", and "outlets". Even "info" in the generic Top-level Domain, ".info" is a well-known abbreviation for the word "information". These strongly suggest that the Respondent is familiar with the English language and there is nothing to indicate otherwise. The Respondent did not submit any response or indicate reasons for why the proceeding should take place in Chinese; nor did he even offer to submit his Response in Chinese. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. It would not be expedient for the proceeding to be delayed nor for the additional translation expenses to be incurred by the Complainant in the circumstances of this case.

### **6.2 Substantive Issues**

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

The Complainant has shown rights in respect of the trade mark COLDWATER CREEK.

It is well established that "[t]he standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the disputed domain name. [...] While each case is judged on its own merits, in 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 to that mark for purposes of UDRP standing." [WIPO Overview 3.0](#), section 1.7.

The entirety of the COLDWATER CREEK mark is reproduced within the disputed domain name.

The addition of the word “outlets” does not prevent a finding of confusing similarity with the Complainant’s said trade mark. [WIPO Overview 3.0](#), section 1.8. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s COLDWATER CREEK mark.

The Panel finds that paragraph 4(a)(i) of the Policy has been established.

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

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.

The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name, and neither is there evidence that the Respondent uses the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain.

Paragraph 4(c) of the Policy provides a list of circumstances by which the Respondent may demonstrate his rights or legitimate interests in the disputed domain name. The Respondent, however, did not rebut the Complainant’s allegations and altogether failed to disprove the Complainant’s prima facie case that he has no rights or legitimate interests in the disputed domain name.

The Panel finds that paragraph 4(a)(ii) of the Policy has been established.

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

The disputed domain name incorporates the entirety of the Complainant’s distinctive COLDWATER CREEK trade mark with the addition of the term, “outlets”, and it resolves to an inactive webpage. The Complainant’s COLDWATER CREEK mark has been registered for over 30 years. Given that length of time, the distinctiveness of the Complainant’s COLDWATER CREEK mark, and the many trade mark registrations it possesses, the Panel finds that the Respondent more likely than not, would have known of the Complainant and its COLDWATER CREEK mark at the time he registered the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds 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 of the Complainant’s trade mark, and the composition of the disputed domain name, and the Panel is persuaded 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.

Further, the Respondent, with no known affiliation with the name comprised in the disputed domain name or with the name “Coldwater Creek” and with no known rights or interests in the disputed domain name, selected a well-established and distinctive trade mark of the Complainant which has been used for many decades. The Respondent did not file a Response nor explain his choice of the disputed domain name. These are all factors from which the Panel draws an adverse inference, and which lead to its conclusion that the disputed domain name was registered and is being used in bad faith.

The Panel finds that paragraph 4(a)(iii) of the Policy has been established.

## **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 <coldwatercreekoutlets.info> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: February 28, 2024