

## **ADMINISTRATIVE PANEL DECISION**

CoryxKenshin LLC v. BIGBOM LTD.

Case No. D2024-0964

### **1. The Parties**

The Complainant is CoryxKenshin LLC, United States of America, represented by Carlson, Gaskey & Olds, P.C., United States of America.

The Respondent is BIGBOM LTD., Viet Nam.

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

The disputed domain name <coryxxkenshin.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 5, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 2024, 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 (Withheld For Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2024, 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 March 10, 2024, which was updated to comply with the Center's mutual jurisdiction policy on March 11, 2024.

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 March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 8, 2024.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on April 12, 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**

Cory DeVante Williams, better known online as “CoryxKenshin” is an American YouTuber and actor, known for his comedic playthroughs of horror games, and ranked the fourth top creator in the United States in 2021.

The Complainant is a company that owns registered trademark and common law trademark rights for CORYXKENSIN for numerous goods and services, including the United States Trademark Registration number 6,482,025, registered on September 14, 2021.

The disputed domain name was registered on November 29, 2023.

The Panel accessed the disputed domain name on April 20, 2024, which resolved to a webstore named “CoryxKenshin”, containing reproductions of the CORYXKENSIN trademark and where clothing items were offered for sale and announcing itself as “CoryxKenshin Official Store”. The “About us” section of the webstore states that it is “a professional and reliable wholesale shopping platform with absolute best prices, high qualities, diverse products and professional after-sales services.” And the “CoryxKenshin Store is an exclusive store for the world’s best animal themed apparels such as lion, donkey, mouse and so on.”

#### **5. Parties’ Contentions**

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

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The trademark CORYXKENSIN was first used by the Complainant in 2009. The Complainant registered its trademark CORYXKENSIN with the United States Patent and Trademark Office for use with the several goods and services. Since April 26, 2009, the Complainant has a YouTube channel named “CoryxKenshin” that prominently features the trademark CORYXKENSIN in association with the same goods and services. The number of Complainant’s subscribers has significantly increased over the past few years, strengthening its trademark rights. Additionally, the Complainant has owned the domain name <coryxkenshin.com> since February 29, 2016, where it sells merchandise in association with the trademark CORYXKENSIN. The Complainant’s trademark CORYXKENSIN and the disputed domain name are confusingly similar and almost identical, with the addition of another letter “x” in the middle of the Complainant’s CORYXKENSIN trademark, right next to the letter “x” in the Complainant’s trademark. As such, Internet users searching and wishing to obtain CORYXKENSIN’s goods offered on the Complainant’s website are likely to be mistakenly directed to the Respondent’s website. The disputed domain name causes at least “initial interest confusion” among Internet users who seek the Complainant’s website, and it causes users to expend time and energy accessing the Respondent’s website.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The circumstances described in the Complaint constitute a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is using the Complainant’s trademark on the confusingly similar disputed domain name without permission. The Respondent is also not commonly known by the disputed domain name. Additionally, the Complainant owns a trademark registration for CORYXKENSIN and has common law rights in the trademark CORYXKENSIN. Therefore, there is no legitimate use of the disputed domain name.

- The disputed domain name was registered and is being used in bad faith. The disputed domain name is almost identical and confusingly similar to the Complainant's mark. Furthermore, the Respondent has taken efforts to conceal its identity by not providing their legal name when registering the disputed domain name. The use of a false name in registering a domain is evidence that the Respondent knew it was using the Complainant's mark, but went forward anyway. The only plausible reason for the Respondent's registration of the disputed domain name was to obtain the domain name in bad faith to sell non-licensed products.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove 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**

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.

Annex 2 to the Complaint shows a registration for CORYXKENSHIN trademark obtained by the Complainant in 2021. 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 trademark CORYXKENSHIN is wholly encompassed within the disputed domain name, with an additional letter "x", as well as with the generic Top Level-Domain ("gTLD") extension ".com".

The additional letter "x" appears to be an intentional misspelling of the Complainant's trademark. WIPO Overview 3.0, section 1.9.

It is also well established that the addition of a gTLD, such as ".com", is typically disregarded when determining whether a domain name is confusingly similar to a complainant's trademark as such is viewed as a standard registration requirement. WIPO Overview 3.0, section 1.11.1.

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.

The Complainant has not licensed nor authorized the use of its well-known trademark to the Respondent, and the Panel finds no indication that the Respondent is commonly known by the disputed domain name.

Furthermore, the Complainant has shown that the disputed domain name is linked to a website offering clothing items under the CORYXKENSHIN trademark, reproducing the Complainant's trademark and logo. However, according to the Complainant, the Respondent is not an authorized reseller, nor has obtained any permission for such reproductions of trademarks and logos.

Additionally, although encompassing the Complainant's trademark CORYXKENSHIN at the disputed domain name and entitling the respective website "CoryxKenshin", the website does not accurately and prominently disclose the registrant's relationship with the trademark holder. On the contrary, the website purports to be the official merch store of the Complainant. Therefore, the Respondent does not pass the "Ok! Data test" to characterize a legitimate interest with regards to the disputed domain name (see *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903).

The Panel has no doubt that "CoryxKenshin" is a term directly connected with the Complainant's online videos and related clothing items.

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.

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.

The Panel concludes that it is not feasible that the Respondent was not aware of the Complainant's trademark and that the registration of the disputed domain name was a mere coincidence.

When the disputed domain name was registered (in 2023) the CORYXKENSHIN trademark was already connected with the Complainant's online videos and related clothing items.

The disputed domain name includes the distinctive trademark CORYXKENSHIN in its entirety, just adding an extra "x", forming an expression which has no dictionary meaning in English. According to the WIPO Overview 3.0, section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Actually, the content at the website linked to the disputed domain name - including reproductions of the Complainant's trademark and the description of the respective product, which is being offered for sale – makes it clear that the Respondent intentionally attempted to attract the Complainant's customers, for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

Finally, the absence of a formal reply from the Respondent to the Complainant's contentions and of any justification of the use of the trademark further support a finding of bad faith in the present case.

## **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 <coryxxkenshin.com> be transferred to the Complainant.

*/Rodrigo Azevedo/*

**Rodrigo Azevedo**

Sole Panelist

Date: April 26, 2024