

## **ADMINISTRATIVE PANEL DECISION**

CW Brands LLC v. wen li  
Case No. D2024-4016

### **1. The Parties**

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

The Respondent is wen li, China.

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

The disputed domain name <coldwatercreek-us.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2024. On October 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 2, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 3, 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 October 4, 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 October 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 30, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on November 1, 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, CW Brands LLC, is a limited liability company organized under the laws of Delaware, United States, specializing in clothing products.

The Complainant has submitted evidence showing that it is the registered owner of numerous COLDWATER CREEK trademarks globally, including but not limited to the following:

- United States trademark registration No. 1531418, registered on March 21, 1989, for the word mark COLDWATER CREEK, in class 42;
- United States trademark registration No. 1861320, registered on November 1, 1994, for the word mark COLDWATER CREEK, in class 42; and
- Chinese trademark registration No. 8477627, registered on December 7, 2013, for the word mark COLDWATER CREEK, in class 25.

All of these trademarks were registered prior to the registration of the disputed domain name on August 9, 2024.

The disputed domain name currently redirects to a website that appears to be an under-construction page intended for an online store. The page displays the name “Coldwater Creek” at the top next to a search bar, and includes tabs such as “Featured Products,” “Collection List,” and “All Products.” A series of empty icons are displayed where product images would typically appear.

Based on the disclosed Whois information, the Respondent is located in China.

#### **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.

The Complainant argues that the disputed domain name is identical or confusingly similar to its COLDWATER CREEK trademark, as it fully incorporates the trademark. The addition of a hyphen and the abbreviation “us” does not prevent the confusing similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name, based on the following points: (1) the Respondent is not commonly known by the disputed domain name; (2) there is no evidence of use or preparation to use the disputed domain name in connection with a bona fide offering of goods or services, as the disputed domain name currently resolves to an inactive website that appears to promote competing clothing products; (3) the Respondent is not making legitimate noncommercial or fair use of the disputed domain names but instead has the intent for commercial gain by misleadingly diverting consumers or potentially tarnishing the trademark or service mark at issue.

Finally, the Complainant contends that the Respondent's registration and use of the disputed domain name constitute bad faith. The Respondent appears to have intentionally selected a domain name closely resembling the Complainant's trademark, likely for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or one of its competitors for valuable consideration, exceeding the Respondent's documented out-of-pocket costs directly related to the disputed domain name. Additionally, the Respondent is alleged to have intentionally attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark regarding the source, sponsorship, affiliation, or endorsement of the Respondent's website, products, or services.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

### **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.

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 mark is recognizable 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, the geographical term "us", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

Indeed, the Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the COLDWATER CREEK trademark or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the COLDWATER CREEK trademarks, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

While the terms “cold”, “water”, and “creek” have descriptive dictionary meanings, the website linked to the disputed domain name does not include any content related such dictionary meanings. Instead, the site is under construction and is intended to become a commercial website. This use diverges entirely from any potential descriptive meaning and appears to be aimed at misleading consumers by creating the impression of an affiliation with the Complainant’s trademarks. Importantly, in the view of the Panel, the disputed domain name incorporates exactly the Complainant’s trademark, and such composition creates a risk of implied affiliation or suggestion of sponsorship and/or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has provided evidence supporting its prima facie claim that the Respondent lacks any 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.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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 observes that the Complainant’s COLDWATER CREEK trademark registrations significantly predate the Respondent’s registration of the disputed domain name. In the Panel’s view, given the distinctiveness of the mark in relation to the relevant goods and services, the choice of a domain name identically incorporating the Complainant’s trademark could not have been accidental. Moreover, the absence of any credible explanation from the Respondent leads the Panel to conclude that the Respondent was aware of the Complainant’s trademarks and intentionally sought to exploit them.

In this regard, the Panel further believes that the website associated with the disputed domain name reflects an attempt to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. Such conduct constitutes use of the disputed domain name in bad faith under the Policy. [WIPO Overview 3.0](#), section 3.1.4.

The Panel concludes that, under the circumstances of this case, the Respondent’s registration and use of the disputed domain name constitute bad faith.

Accordingly, 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 <coldwatercreek-us.com> be transferred to the Complainant.

*/Alissia Shchichka/*

**Alissia Shchichka**

Sole Panelist

Date: November 13, 2024