

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 1000413

Complainant: Zino Davidoff SA

Respondent: nlfast

Domain Name: coolwatercologne.net

Registrar: ENOM, INC.

1. Procedural History

On 20 December 2010, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") and the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 26 August, 1999, and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 22 December 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the Registrar of the domain name in dispute, FABULOUS.COM PTY LTD..

On 23 December 2010, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 4 May 2011, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 13 May 2011, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded, and the ADNDRC Beijing Office notified the Respondent, the Registrar and ICANN of the commencement of the case proceeding.

On 10 June 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 14 June 2011, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case

file to the Panelist on 15 June 2011.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

2. Factual Background

For the Complainant

The Complainant of the case is Zino Davidoff SA. Its address is Rue Faucigny 5, 1700 Fribourg, Switzerland. Its authorized representative is S&F INTELLECTUAL PROPERTY CHINA. The Complainant has registered the trademark “COOL WATER” (International Registration No. 615313) through World Intellectual Property Organization on February 4, 1994. The trademark “COOL WATER” is designated to many countries including China, covering the goods of toilet soaps, perfumery, essential oils, cosmetics, eau de toilette, etc..

For the Respondent

The Respondent of the case is nlfast with the address at Chang jiang lu, anhui, China. According to the record in the Whois database, the disputed domain name “coolwatercologne.net” was registered by the Respondent on 25 November 2009.

3. Parties’ Contentions

The Complainant

(1) Respondent’s domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the true owner to the exclusive rights of the series of trademarks COOL WATER. The complainant registered the trademark “*Cool Water*” (International Registration No. 615313) through WIPO on February 4, 1994. The trademark “*Cool Water*” is designated to many countries including China, covering toilet soaps; perfumery, essential oils, cosmetics, eau de toilette, etc.

The Complainant registered the trademark COOL WATER (International Registration No. 761286) through WIPO on April 6, 2001. The trademark COOL WATER is designated to many countries including China, covering the goods perfumery; cosmetics; toiletries, etc.

The disputed domain name is confusingly similar to the Complainant's trademark COOL WATER. Since the ".net" is not taken into account in the comparison, "coolwatercologne" is the main part of the disputed domain name. Even if "coolwatercologne" could be separated in various ways, the most common way is to separate it into "cool" + "water"+"cologne" based on humans' identifying habits.

Firstly, "coolwater" is identical to the Complainant's trademarks COOL WATER. Since domain names are not case sensitive, no spaces are used.

Secondly, cologne is a common English word for perfumes used by men. Therefore, "cool" + "water"+"cologne" can be understood as a type of cologne bearing the brand COOL WATER.

Thus, the disputed domain name can easily mislead consumers to believe the disputed domain name has some relation with the Complainant.

For the foregoing reasons, the Complainant believes that paragraph 4(a)(i) of the Policy has been satisfied.

(2) The Respondent has no right or legitimate interest in respect of the domain name.

Firstly, the Respondent has never been authorized by the Complainant to use the trademark COOL WATER under any circumstances. Furthermore, the Complainant has no business relationship with the Respondent. Thus, the Respondent does not have any rights with regards to the trademark COOL WATER.

Secondly, the Respondent's name, address and any other information can not be linked with COOL WATER.

Thirdly, further searches by the Complainant do not prove that the Respondent has any other rights for COOL WATER.

For the foregoing reasons, the Complainant believes that paragraph 4(a)(ii) of the Policy has been satisfied.

(3) The Respondent has shown bad faith in registering and using the domain name.

The Respondent is using the disputed domain name to offer links to third parties selling products bearing the Complainant's trademark COOL WATER.

Clearly, this kind of action should be regarded as evidence of bad faith as prescribed in 4(b) (iv) of the Policy. The goods sold on the website linked with the disputed domain name are the Complainant's primary goods. The Respondent also advertises and makes reference to other products of competitors such as Calvin Klein and Hugo Boss. The Respondent's conduct also should be regarded as evidence of bad faith as prescribed in 4(b) (iii) of the Policy.

The respondent was aware of COOL WATER well before registering the disputed domain name. Using WWW.GOOGLE.COM.HK we searched for 'COOL WATER COLOGNE' and obtained 2,060,000 results. All the information on the first page of the search result is associated to the Complainant. The Respondent is undoubtedly aware of the Complainant's prior trademark rights.

For the foregoing reasons, the Complainant believes that paragraph 4(a)(iii) of the Policy has been satisfied.

The Complainant requests the disputed domain name "coolwatercologne.net" be transferred to the Complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

Identity or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark rights and the similarity between the disputed domain name and its trademark.

The Panel finds that before the registration of the disputed domain name Complainant's trademark COOL WATER had been registered and used on perfume, soaps and other products

in a number of countries. The Complainant therefore has the exclusive right over the mark “COOL WATER.”

The disputed domain name is “coolwatercologne.net”. Apart from the generic top-level domain suffix “.net”, the disputed domain name consists of “coolwatercologne”, which can be read as “coolwater”+ “cologne.” Since “cologne” is the generic term meaning a perfumed liquid composed of alcohol and fragrant oils and actually related to the Complainant’s goods marked with “COOL WATER”, the Panel finds that the disputed domain name “coolwatercologne.net” is confusingly similar to the Complainant’s registered trademark “COOL WATER”. Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name “coolwatercologne.net”. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent did not respond.

Through examining the notarized evidence submitted by the Complainant, the Panel notes that

the website at the dispute domain name “coolwatercologne.net” is selling suspected counterfeit the Complainant’s products as well as advertising and making reference to other products of the Complainant’s competitors such as Calvin Klein and Hugo Boss.

The Panel finds that the Respondent’s intentional use of the disputed domain name that is confusingly similar to the Complainant’s reputable mark to attract consumers to a website that is offering counterfeit products is likely to confuse the consumers that are looking for the Complainant’s products on the Internet.

The Panel therefore rules that this is adequate to conclude that the Respondent has registered and is using the disputed domain name in bad faith under the Policy, paragraph 4(b). Therefore, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “coolwatercologne.net” be transferred to the Complainant Zino Davidoff SA.

Panelist: 薛虹

Dated: 29 June 2011