

ADMINISTRATIVE PANEL DECISION

Caroll International v. Trinh Long Vu
Case No. D2023-0495

1. The Parties

The Complainant is Caroll International, France, represented by Inlex IP Expertise, France.

The Respondent is Trinh Long Vu, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <carollaccessories.com> (the “Disputed Domain Name”) is registered with iNET Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 3, 2023, the Registrar transmitted by email to the Center its verification response, disclosing the registrant and contact information for the Disputed Domain Name which differed from the named Respondent (NOT DISCLOSED) and contact information in the Complaint and informing that the language of the registration agreement is Vietnamese. The Center sent an email communication to the Complainant on February 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On February 6, 2023, the Center sent an email communication to the Parties in both Vietnamese and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Vietnamese; or submit a request for English to be the language of the administrative proceedings.

On February 7, 2023, the Complainant filed an amended Complaint and a request for English to be the language of the proceedings. The Respondent did not comment on the language of the proceedings.

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 February 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 21, 2023.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on March 29, 2023. 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 a French fashion brand for women that was established in 1963. The Complainant sells its products through over 500 retail stores around the world, and via a multilingual website. As of 2018, the Complainant's turnover was approximately EUR 182.31 million.

The Complainant has registered a variety of trademarks that consist of or contain the word "CAROLL" (the "CAROLL Trademarks") worldwide, including in Viet Nam, where the Respondent resides, for fashion-related products in classes 3, 14, 18, 24, and 25, including, but not limited to the French trademark registration No. 1233265 registered on April 15, 1983, and the International Trademark Registration No. 1208979 registered on February 25, 2014 designating Viet Nam.

In addition, the Complainant owns some domain names featuring the CAROLL Trademarks, notably the domain name <caroll.com> registered on May 15, 1997.

The Disputed Domain Name was registered on January 9, 2023. As of the date of this Decision, the Disputed Domain Name is resolving to an inactive website. However, according to the evidence submitted by the Complainant, the Disputed Domain Name was used to resolve to a website that was prominently displaying a variation of the Complainant's trademark at the top of the home page for the sale of fashion accessories under various brands.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant contends that it has rights in and to the CAROLL Trademarks in many jurisdictions. Further, the Complainant contends that its CAROLL Trademarks have attained recognition on a worldwide basis.

Second, the Complainant submits that the Disputed Domain Name is confusingly similar to its CAROLL Trademarks. The Disputed Domain Name includes the full term "CAROLL" with the descriptive element "accessories" added in the final position. The Complainant argues that the addition of descriptive terms to a trademark does not prevent a finding of confusing similarity.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant asserts that the Respondent has no trademark rights related to CAROLL or “caroll accessories” anywhere.

Second, the Complainant argues that the Respondent is neither affiliated with nor has it been licensed or permitted to use the Complainant’s Trademarks or any domain names incorporating the CAROLL Trademarks in any way.

Third, the Complainant has conducted a Google search on “caroll accessories”, but found no pertinent results related to the Respondent.

Further, the Complainant contends that the Respondent has registered the Disputed Domain Name with the brand CAROLL to take unfair advantage of the reputation of the Complainant’s Trademarks and divert the Complainant’s customers for his own advantage.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant argues that the Respondent should have been aware of the Complainant’s Trademarks before registering the Disputed Domain Name given the Complainant’s worldwide reputation and the ubiquitous presence of the CAROLL Trademarks on a global basis.

Second, the Complainant submits that the Disputed Domain Name is intentionally registered and used to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s Trademarks as to the source, sponsorship, affiliation, or endorsement of a Respondent’s website, which suggests bad faith.

Third, the Complainant asserts that the Respondent used a privacy service to hide its identity and avoid being notified of the UDRP proceedings. This is considered an inference of bad faith according to many prior UDRP decisions.

Fourth, the Complainant argues that the address provided by the Respondent when registering the Disputed Domain Name and also the address mentioned on the website thereunder seem both incorrect. Besides, the Respondent reproduces some pictures and trademarks of the third parties without their permission. These are deemed as indications of bad faith.

Further, the Complainant asserts that as the website available through the Disputed Domain Name may look unfinished and contains incorrect and vague information, it may tarnish the Complainant’s reputation by creating a negative consumer perception around the CAROLL Trademarks.

With the said arguments, 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

A. Preliminary Considerations

(I) The Respondent's Identity

The Panel notes that at the time the Complaint was filed on February 2, 2023, the Respondent was identified as "NOT DISCLOSED". On February 3, 2023, the Registrar revealed the underlying Registrant "Trinh Long Vu". The Center sent a Notice of Registrant Information to the Complainant on February 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On February 7, 2023, the Complainant filed an amended Complaint, designating the underlying registrant as the Respondent. Hence, the Panel considers "Trinh Long Vu" as the Respondent in the subject case.

(II) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Vietnamese.

As the Complaint was filed in English, the Center, in its email of the language of proceeding dated February 6, 2023, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Vietnamese, or (iii) a substantiated request for English to be the language of the proceeding by February 9, 2023.

On February 7, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, *e.g.*, *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

- (i) the fact that the Complainant, a French entity, does not appear to be able to communicate in Vietnamese, and therefore if the Complainant was required to have the documents translated into Vietnamese, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;
- (ii) the Disputed Domain Name itself contains the English words "accessories", and the website under the Disputed Domain Name also contains English words, such as "blog", "freeship", and "trendy"; these suggest that the Respondent has knowledge of the English language and would be able to communicate in English; and
- (iii) the Respondent did not object to English being the language of the proceeding and did not submit a Response in either English or Vietnamese.

Therefore, for easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(III) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#); and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel is satisfied that the Complainant's ownership of the CAROLL Trademarks predates the registration of the Disputed Domain Name, and therefore, the Complainant has established rights in these trademarks.

Second, the Panel finds the Disputed Domain Name is confusingly similar to the Complainant's Trademarks as it reproduces the CAROLL trademark in its entirety with the mere insertion of the suffix "accessories". The CAROLL trademark is clearly recognizable in the Disputed Domain Name. In this regard, the Panel finds that the addition does not prevent a finding of confusing similarity between the Complainant's trademark and Disputed Domain Name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Third, the Panel finds, similarly to other UDRP panels, that the generic Top-Level Domain, in this case, ".com", does not affect the Disputed Domain Name to determine whether it is identical or confusingly similar (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the CAROLL Trademarks, and paragraph 4(a)(i) of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular, but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute them.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see section 2.1 of the [WIPO Overview 3.0](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, on the evidence provided by the Complainant, that no license, permission, or authorization of any kind to register or use the Complainant's Trademarks or the Disputed Domain Name has been granted to the Respondent. In addition, there is no indication before the Panel that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to either the CAROLL Trademarks or the Disputed Domain Name. Thus, the Panel finds that the Respondent has no rights in the CAROLL Trademarks.

Furthermore, the Panel finds that the Disputed Domain Name was used to resolve to a website where the Complainant's CAROLL Trademarks were displayed, while no statement or disclaimer disclosing accurately the (lack of) relationship between the Complainant and the Respondent was placed. This unauthorized use of the CAROLL Trademarks may mislead Internet visitors into believing in a connection or association between the Respondent and the Complainant, where such connection or association does not exist in reality. Besides, the Panel also finds that the Disputed Domain Name, which is composed of the Complainant's trademark with the term "accessories" related to the Complainant's products, is inherently misleading Internet users into believing that the fashion accessories offered for sale are connected to or come from the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)), while, according to the evidence submitted by the Complainant, third-parties' products were also offered for sale on the website at the Disputed Domain Name. Therefore, the Panel finds that by using the Disputed Domain Name in such a manner, the Respondent is attempting to ride on the reputation of the CAROLL Trademarks, and thus, such use does not constitute a *bona fide* use within paragraph 4(c)(i) of the Policy.

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds that there is no evidence showing that the Respondent has been commonly known by the Disputed Domain Name. Further, there is also no evidence showing that the Respondent operates any *bona fide* business or organization under the Disputed Domain Name. Therefore, it is not evidenced that the Respondent is identified by "carollaccessories" or that the Respondent has any right to it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds that there is no evidence that the Respondent is making any noncommercial or fair use of the Disputed Domain Name. Instead, as it appears following the Complainant's assertions and evidence with regard to the Respondent's registration of the Disputed Domain Name, the composition of the Disputed Domain Name, which includes the Complainant's distinctive trademark in its entirety, carries a risk of implied affiliation to the Complainant that is not accurate, and therefore cannot constitute fair use. Furthermore, it is evident that the Respondent had full knowledge of the Complainant's Trademarks and had an intention to gain profit by riding on the good reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests regarding the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy, is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular, but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel finds that the Disputed Domain Name comprises the CAROLL trademark in its entirety, with the addition of the term "accessories" at the end. Given the Complainant's extensive use and registration of the CAROLL Trademarks in many countries, it is highly unlikely that the Respondent registered the Disputed Domain Name by chance or coincidence. Moreover, after examining the contents of the website, which was previously resolved from the Disputed Domain Name, the Panel is of the view that the Respondent had knowledge of the Complainant and its CAROLL Trademarks when registering the Disputed Domain Name. The Panel considers such registration as an attempt by the Respondent to take advantage of the Complainant's goodwill (see section 3.2.1 of the [WIPO Overview 3.0](#)).

In addition, the Complainant has provided ample evidence that the website under the Disputed Domain Name previously offered fashion accessories products, which are in line with the business of the Complainant. Besides the adoption of the Complainant's CAROLL trademark as a part of the Disputed Domain Name, the Respondent also used the Complainant's trademark on the website. It is further noted that as of the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it is resolving to an inactive website. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of [WIPO Overview 3.0](#)).

With the said facts, the Panel finds the Respondent intentionally registered and used the Disputed Domain Name for commercial gain and that the Respondent's use of the Disputed Domain Name is likely to mislead consumers and confuse them by making them believe that the website is associated, fostered or endorsed by the Complainant. Such misleading behavior is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith, and the third element under paragraph 4(a)(iii) of the Policy is 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, <carollaccessories.com>, be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: April 12, 2023