

## **ADMINISTRATIVE PANEL DECISION**

CW Brands LLC v. Er Peng Chen  
Case No. D2022-1391

### **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 Er Peng Chen, China.

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

The disputed domain name <coldwaterecreek.com> is registered with DropCatch.com LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 2022, 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 April 20, 2022.

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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 18, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on May 30, 2022. 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 United States online retailer of women's organic textile clothing, accessories, shoes and home décor.

The Complainant is the owner of several trademark registrations for COLDWATER CREEK, including the following, as per printouts of the relevant trademark registration details taken from the United States Patent and Trademark Office ("USPTO")'s website submitted as annexes 7 through 9 to the Complaint:

- United States trademark registration No. 1531418 for COLDWATER CREEK (word mark), filed on July 14, 1988 and registered on March 21, 1989, in international class 42;
- United States trademark registration No. 1861320 for COLDWATER CREEK (word mark), filed on November 12, 1993 and registered on November 1, 1994, in international class 42; and
- United States trademark registration No. 1876534 for COLDWATER CREEK (word mark), filed on November 18, 1993 and registered on January 31, 1995, in international classes 14 and 25.

The COLDWATER CREEK products are advertised and offered for sale online via the website at <coldwatercreek.com>, registered on January 16, 1998.

The disputed domain name <coldwaterecreek.com> was registered on March 31, 2022 and redirects to an online gambling website in Chinese.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that disputed domain name is confusingly similar to the trademark COLDWATER CREEK in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the letter "e" and the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that there is no evidence of the Respondent's demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services since the disputed domain name is used to redirect Internet users to a Chinese website which in no way offers goods or services associated with the trademark at issue.

The Complainant contends that the Respondent is also not commonly known by the disputed domain name and has never acquired any trademark rights in COLDWATER CREEK.

The Complainant further asserts that the Respondent registered the disputed domain name with the intent for commercial gain, to misleadingly divert consumers and tarnish the Complainant's trademark.

With reference to circumstances evidencing bad faith, the Complainant indicates that the Respondent registered and used the disputed domain name either i) 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 directly related to the disputed domain name; or ii) to attract Internet users, for commercial gain, to the Respondent's 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

## B. Respondent

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

## 6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent 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.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark COLDWATER CREEK based on the trademark registrations cited under section 4 above.

As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

Moreover, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element (sections 1.8 of the [WIPO Overview 3.0](#)). Furthermore, as stated in section 1.9 of the [WIPO Overview 3.0](#), "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

In addition, the gTLD ".com" is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the mere addition of the letter "e" between the words "coldwater" and "creek" of the Complainant's trademark COLDWATER CREEK does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark and may also be interpreted as a misspelling of the Complainant's trademark COLDWATER CREEK. See *ACCOR v. I&M Raamatupidamise O/Accora Consult OÜ*, WIPO Case No. [D2006-0650](#), where the UDRP panel stated that the addition of "the single letter 'a' is an obvious attempt to 'typosquat' the Domain Name and is insufficient to avoid confusion" and *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#), finding that "this is clearly a 'typosquatting' case where the disputed domain name is a slight misspelling of a registered trademark to divert Internet traffic".

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

“(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 out a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy.

Moreover, it has been repeatedly stated that when a respondent does not avail himself of its right to respond to a complaint, it can be assumed in appropriate circumstances that the respondent has no rights or legitimate interests in the disputed domain name.

According to the evidence on record, there is no relationship between the Complainant and the Respondent, and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name.

Moreover, there is no element from which the Panel could infer the Respondent’s right over the disputed domain name, or that the Respondent, whose name disclosed in the Registrar’s WhoIs records for the disputed domain name is Er Peng Chen, might be commonly known by the disputed domain name.

Whilst the Panel appreciates the descriptive character of the terms “cold water creek” incorporated in the Complainant’s trademark and in the disputed domain name, which also correspond to the name of several streams called “Cold Water Creek” in the United States, the Panel notes that, in the present case, the content available on the website to which the disputed domain name resolves, which promote lotteries, casinos, and other online games, does not relate to such possible descriptive meaning. Moreover, the addition of the letter “e” to the Complainant’s trademark in the disputed domain name, besides rendering the resulting expression meaningless, suggests that, on balance of probabilities, the Respondent registered the disputed domain name with the intention to attract Internet users looking for the Complainant’s website at <coldwatercreek.com> and inadvertently typing an additional letter “e” between the words “coldwater” and “creek”.

In view of the above and since the Respondent has failed to reply to the Complainant’s contentions and to provide any element to demonstrate a possible right or legitimate interest in the disputed domain name, the Panel finds that the Respondent’s use of the disputed domain name does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant’s trademark.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to bad faith at the time of the registration, the Panel finds that, in light of i) the prior registration and use of the Complainant's trademark COLDWATER CREEK in connection with the Complainant's clothing and accessories, advertised and offered for sale online via the website at <coldwatercreek.com>; ii) the circumstance that the disputed domain name differs for only one letter "e" from the Complainant's trademark and the domain name <coldwatercreek.com>; and iii) the fact that a cursory search for "Cold Water Creek" performed on main search engines returns results related to the Complainant in the first pages, including the Complainant's website "www.coldwatercreek.com" featured amongst the first results, the Respondent likely registered the disputed domain name to target the Complainant and its trademark.

The Panel finds that, on balance of probabilities, the Respondent registered the disputed domain name, almost identical to the Complainant's trademark, in order to intentionally attempt to attract, for commercial gain, Internet users looking for the Complainant's products, to the website described above, promoting online gambling services, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such website and the services provided therein, according to paragraph 4(b)(iv) of the Policy.

As an additional circumstance suggesting bad faith, the Panel notes that there has been no Response and, in this case, as stated in *Sports Holdings, Inc. v. Whois ID Theft Protection*, WIPO Case No. [D2006-1146](#): "it is open for the Panel to infer a *prima facie* case of bad faith registration. The Panel also notes that the Respondent has used the present domain name in a commercial website. The evidence before the Panel indicates that the Respondent has used (or allowed the use) of the domain name for the purpose of some apparently commercial nature from which the Respondent (or a related third party) presumably derives or intends to derive revenue. This is not conduct consistent with registration and use in good faith".

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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.com> be transferred to the Complainant.

/Luca Barbero/

**Luca Barbero**

Sole Panelist

Date: June 13, 2022