

ADMINISTRATIVE PANEL DECISION

Cache-Cache v. Wei Zhang
Case No. D2022-2277

1. The Parties

The Complainant is Cache-Cache, France, represented by Inlex IP Expertise, France.

The Respondent is Wei Zhang, China.

2. The Domain Name and Registrar

The disputed domain name <cachecache-es.xyz> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 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 June 27, 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 June 27, 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 July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on August 4, 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 the registered owner of the trademark CACHE-CACHE in several jurisdictions, including in Spain and in the European Union in classes 14, 18, 24 and/or 25 in relation with clothes, bags, shoes, and beauty products. The Complainant owns trademark rights for CACHE-CACHE since the 1980s, e.g., French trademark registration No. 1393100, registered on February 5, 1987.

The disputed domain name has been registered on June 7, 2022.

5. Parties' Contentions

A. Complainant

The Complainant's trademark CACHE-CACHE is a famous fashion brand for women.

The disputed domain name contains identically and in a confusing way the Complainant's trademark CACHE-CACHE in combination with the suffix "-es" which makes strong reference to the Top Level Domain ("TLD") ".es" designating the territorial area of Spain.

The disputed domain name is confusingly similar to the Complainant's prior rights visually, phonetically and conceptually.

The Respondent has not been authorized by the Complainant to use the trademark CACHE-CACHE.

The Respondent has no prior rights or legitimate interests in the disputed domain name.

The Respondent has no license from the Complainant to use the trademark CACHE-CACHE.

The disputed domain name points to a website which is a copy of the Complainant's website. Indeed, the website reproduces the Complainant's trademark and logo CACHE-CACHE as well as the pictures and products of the Complainant.

The website offers discounted prices thus leading the consumer to believe that it is an outlet site or, at the very least, a site affiliated with the Complainant.

The disputed domain name has been registered to mislead the consumer. The aim of the Respondent is to take advantage of the Complainant's earlier trademark to attract the consumer on its website which is obviously suspect and may be used to scam users or other fraudulent purposes.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the trademark CACHE-CACHE on the basis of its multiple trademark registrations in several countries, including Spain. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's CACHE-CACHE mark. The Respondent's incorporation of the Complainant's mark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's marks. The mere addition of the term "es" and a hyphen to the Complainant's trademark CACHE-CACHE does not prevent a finding of confusing similarity with the Complainant's mark. Furthermore, the addition of the TLD ".xyz" does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by the Respondent, will lead to this ground being set forth. Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to a commercial website that includes the trademark CACHE-CACHE and logos of the Complainant, and offers the Complainant's goods at disproportionately discounted prices, without any disclaimer as to the relation with or authorization of the Complainant, exacerbating the user confusion as to the website's affiliation to the Complainant. Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct;
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the Complainant submits that, at the date of registration of the disputed domain name, the Respondent would have had actual knowledge of the Complainant's mark CACHE-CACHE.

The Panel's bad faith finding is reinforced given the construction of the disputed domain name, which combines the mark CACHE-CACHE with the term "es" which makes reference to ".es", the TLD for Spain, as well as the fact that the disputed domain name directed to the a website that allegedly offers the Complainant's trademarked goods. The Panel is satisfied that by directing the disputed domain name to a commercial website allegedly offering the Complainant's goods, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

In addition, the potential use of the disputed domain name for scam and phishing, supported by the Complainant's claims and evidence, affirms a finding of bad faith (see [WIPO Overview 3.0](#), section 3.4).

Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name. Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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, <cachecache-es.xyz> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: August 17, 2022