

## **ADMINISTRATIVE PANEL DECISION**

**CoryxKenshin LLC v. Whois Privacy, Private by Design, LLC**  
**Case No. D2022-2787**

### **1. The Parties**

The Complainant is CoryxKenshin LLC, United States of America (“United States”), represented by Carlson, Gaskey & Olds, P.C., United States.

The Respondent is Whois Privacy, Private by Design, LLC, United States.

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

The disputed domain name <coryxkenshins.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On August 1, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On August 4, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in English and Japanese of the Complaint, and the proceedings commenced on August 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on September 2, 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 company in the online fashion and video gaming industry. The Complainant provides online videos on its YouTube channel named "CoryxKenshin" created in April 2009, and the channel includes a store offering for sale Complainant's products. It is also the owner of the United States trade mark registration CORYXKENSHIN (No. 6,482,025) which was registered on September 14, 2021 under International Classes 25 and 41. The Complainant also sells fashion goods through its website at "www.coryxkenshin.com".

The disputed domain name <coryxkenshins.com> was registered on March 29, 2022. At the time of this decision, the disputed domain name resolves to a webpage mainly selling clothing. "CoryxKenshin" appears on the top left page of the webpage under the disputed domain name. The Contact Us details of the page under the disputed domain name gives an address in the United States. The disputed domain name resolved to a similar webpage at the time of filing of the Complaint.

The Respondent is a Whois privacy service. No details of the actual registrant of the disputed domain name are available.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark. The disputed domain name is almost identical to the Complainant's trademark other except for the addition of the letter "s". The use of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name does not eliminate the overall notion that the designation is connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name; and

(c) The disputed domain name was registered and is being used in bad faith. The Complainant has used its trade mark for over 10 years and the Respondent must have known of it when registering the disputed domain name. The Respondent has registered a disputed domain name that incorporates the CORYXKENSHIN trade mark to attract Internet users for commercial gain.

The Complainant requests the transfer of the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1 Procedural Issue: Language of the Proceeding

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 administrative 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.

In this case, the language of the Registration Agreement for the disputed domain name is Japanese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- (i) The disputed domain name is in English;
- (ii) Both the Complainant and the Respondent have addresses in the United States; and
- (iii) The website under the disputed domain name is in English.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraphs 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Japanese;
- the Respondent has not commented on the language of the proceeding;
- the website the disputed domain name resolves to is entirely in English;
- the “Contact Us” address on the website under the disputed domain name is in the United States; and
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent’s failure to respond to a preliminary determination by the Center as to the language of the proceeding “should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint”.

### 6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade 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.

#### A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <coryxkenshins.com> is confusingly similar to the Complainant’s trade mark. The disputed domain name reproduces the CORYXKENSHIN trade mark in its

entirety save for the addition of the letter “s”. The gTLD “.com” is generally disregarded when considering the first element. (See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).)

The Panel notes that the Complainant did not rely on any registered trademarks in Japan where the Registrar is located. The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. These factors may however bear on a panel’s further substantive determination under the second and third elements. (See section 1.1.2 of [WIPO Overview 3.0](#).)

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant’s CORYXKENSHIN trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name “Coryxkenshins”.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

“While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Further, the Panel notes that the disputed domain name resolves to a website offering for sale similar goods to those of the Complainant. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

## **C. Registered and Used in Bad Faith**

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

Given the similarity of the goods (clothing) sold between the websites of the disputed domain name and that of the Complainant, and the confusing similarity between the disputed domain name and the Complainant’s trade mark and domain name, the Panel is satisfied that the Respondent was aware of the Complainant and its CORYXKENSHIN trade mark when it registered the disputed domain name.

It also appears to the Panel that the Respondent has registered the disputed domain name for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs to a webpage using the Complainant’s trade mark as its logo to mainly sell clothing.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 <coryxkenshins.com> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: September 16, 2022