

ADMINISTRATIVE PANEL DECISION

CW Brands LLC v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2023-0567

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 Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <coldwatercreeksale.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2023. On February 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Undisclosed Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 2023, 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 February 15, 2023.

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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 15, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on March 21, 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

Unhelpfully, the Complaint provides no details as to the nature of the Complainant or its activities. However, the copy trademark registrations produced in evidence indicate that the Complainant's address is c/o New Times Group, Miami, Florida. The Complainant's contact details include an email address "[***]@coldwatercreek.com", and the website at "www.coldwatercreek.com" includes some Frequently Asked Questions that include the statement that the assets of Coldwater Creek had been acquired by Newtimes Group.

With some reluctance, therefore, the Panel accepts that the Complainant (or an affiliated company) is the operator of the website at "www.coldwatercreek.com" that offers for sale a wide range of clothing and accessories.

The Complainant does provide evidence that it is the proprietor of a number of trademark registrations in respect of COLDWATER CREEK, including United States trademark number 1531418 stylised word COLDWATER CREEK registered on March 21, 1989 and United States trademark number 1861320 stylised word COLDWATER CREEK registered on November 1, 1994. These are registered among other goods and services for retail store services for clothing and the marks claim first use in commerce in 1984 and 1988.

The Domain Name was registered on July 1, 2022. It resolves to a webpage blocking access to a website with a warning that the website is infected with malicious code.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its COLDWATER CREEK trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name, the Complainant must prove that:

- (i) the Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in its COLDWATER CREEK trademark, both by virtue of its trademark registrations and as a result of its use of the mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Complainant’s COLDWATER CREEK trademark together with the term “sale”. In the view of the Panel, the addition of this term does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s mark. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Domain Name is not being used for an active website but to resolve to a website apparently primed to distribute malware. In the Panel’s view, it is difficult to conceive a legitimate purpose for registering a domain name comprising the entirety of the Complainant’s COLDWATER CREEK trademark together with the term “sale”, particularly in light of the Complainant’s retail activities. It could only have been registered to deceive Internet users into believing that it had been registered by or operated on behalf of the Complainant and for purposes likely associated with phishing or other improper activities.

The Respondent has chosen not to respond to the Complaint to explain its registration or use of the Domain Name, or to take any other steps to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In light of the nature of the Domain Name, there is little doubt that the Respondent had the Complainant and its rights in the COLDWATER CREEK mark in mind when it registered the Domain Name. As set out above, the only possible inference is that the Respondent registered the Domain Name for commercial gain with a view to taking unfair advantage of the Complainant’s rights in the mark and to confuse Internet users into believing that the Domain Name was being operated by or authorized by the Complainant.

The Panel also considers on balance that the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant’s mark in order to install malware onto the user computer with a view to profit-making. As the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) points out at section 3.1.4 “such behaviour is manifestly considered evidence of bad faith”.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

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 Domain Name <coldwatercreeksale.com> be transferred to the Complainant.

/Ilan Lowe/

Ilan Lowe

Sole Panelist

Date: April 4, 2023