

ADMINISTRATIVE PANEL DECISION

KORIAN v. Carolina Rodrigues

Case No. D2023-2885

1. The Parties

The Complainant is KORIAN, France, represented by Scan Avocats AARPI, France.

The Respondent is Carolina Rodrigues, Panama.

2. The Domain Name and Registrar

The disputed domain name <korianmassage.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 2023, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 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 July 21, 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 July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2023.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on September 11, 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 the French company Korian, established in 2003 resulting from the merger of four companies (Fingest, Sérience, Réacti-Malt and Medidep) and has continued to grow in France and Europe ever since. The Complainant provides care services to the elderly and vulnerable people, through the management of retirement homes and specialized clinics.

Currently, the Complainant is carrying its activities in France, Germany, Belgium, Italy, Spain, and the Netherlands (Kingdom of the), serving more than 470,000 patients or residents, employing more than 56,000 people, and had a total turnover of EUR 13,6 billion in 2019. Evidence of the renown of the Complainant and of its services are provided as Annexes D1 to D20 of the Complaint.

The Complainant holds several KORIAN trademark registrations, including:

- French word trademark KORIAN No.°3432962 filed and registered on June 6th, 2006 (duly renewed) in classes 16, 35, 36, 38, 39, 41, 43 and 44;
- European word trademark KORIAN No.°005192224 filed and registered on July 11th, 2006 (duly renewed) in classes 16, 35, 36, 38, 39, 41, 43 and 44;
- United Kingdom word trademark KORIAN No.°UK00905192224 filed on July 11th, 2006 (duly renewed), registered on August 29, 2007 in classes 16, 35, 36, 38, 39, 41, 43 and 44;
- French word trademark KORIAN No.°4033984 filed and registered on September 9th, 2013 (duly renewed) in classes 16, 35, 36, 38, 39, 41, 42, 43 and 44;
- International word trademark registration KORIAN No.° 1210590 filed and registered on February 27th, 2014 in classes 16, 35, 36, 38, 39, 41, 42, 43 and 44;
- United Kingdom word trademark KORIAN No.°UK00801210590 filed on February 27th, 2014, registered on 23, 2025 in classes 16, 35, 36, 38, 39, 41, 42, 43 and 44;
- French word trademark KORIAN No.°4214756 filed and registered on October 10th, 2015 (duly renewed) in classes 10, 16, 20, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45;
- European word trademark KORIAN No.° 014683981 filed and registered on October 15th, 2015 in classes 10, 16, 20, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45;
- United Kingdom word trademark KORIAN No.°UK00914683981 filed on October 15th, 2015, registered on June 02, 2016 in classes 10, 16, 20, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45;
- International word trademark registration KORIAN N.°1327848 filed and registered on August 4th, 2016 in classes 10, 16, 20, 35, 36, 37, 38, 39, 41, 42, 43 and 44.

Proof of these registrations was presented as Annexes E1 to E10 to the Complaint.

The disputed domain name was registered on February 4, 2023, and is currently directed to a webpage with pay-per-click links (“PPC”) to third party websites, including webpages from other institutions rendering similar services, which are direct competitors of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s KORIAN mark. To this end, such underlines that it owns registered trademarks for KORIAN and that there is a goodwill and recognition attained under the name KORIAN, which is a distinct identifier associated with the

Complainant's services.

The Complainant states that the disputed domain name is confusingly similar to its trademark KORIAN, as such encompasses the KORIAN mark in its entirety with the addition of the expression "massage".

The Complainant further contends that the addition of the referred expression is not sufficient to alleviate the confusing similarity between the Complainant's KORIAN mark and the disputed domain name. According to the Complainant, the additions only reinforce the connection with their mark and their business.

In respect of the generic Top-Level Domain ("gTLD") ".com", which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name adopted by the Respondent – a reproduction of the Complainant's registered mark associated with a descriptive expression – shows a clear intention of misleading Internet users, as it links to various third-party websites, including to a page that provides PPC links to several different websites related to services provided by competitors to the Complainant. The Complainant underlines that the disputed domain name gives the impression that it is associated with the Complainant.

The Complainant also indicates that the Respondent registered and is using the disputed domain name in bad faith, noting the composition of the disputed domain name as well as the current use, which is a page with PPC links.

B. Respondent

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

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- i. the disputed domain name is identical or 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 to 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

Regarding the first of the elements, the Panel is satisfied that the Complainant has presented adequate proof of having rights in the mark KORIAN. The evidence demonstrates that the Complainant is the owner of several trademark registrations for KORIAN, which is considered as a renowned trademark in their line of business.

The disputed domain name incorporates the Complainant's trademark KORIAN in its entirety. The addition of the expression "massage" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO](#)

[Overview 3.0](#)”), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. Further, several prior UDRP panels have recognized that the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the complainant’s mark. See section 1.7 of the [WIPO Overview 3.0](#). It is also well established that “.com”, as a gTLD, may be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s mark (section 1.11.1 of the [WIPO Overview 3.0](#)).

Hence, the Panel concludes that the first element of the Policy has been satisfied by the Complainant in this dispute.

B. Rights or Legitimate Interests

The Panel understands that the mark KORIAN is naturally associated with the Complainant, since it is not only registered as a mark in its name, but also has been used to identify the services rendered by the Complainant for over 20 years.

Further, the Complainant provided evidence of the renown of the mark KORIAN and the services rendered under this mark in several different countries. Hence, the Panel considers that the Respondent, in all likelihood, could not be unaware of the mark KORIAN, and its direct relation to the Complainant.

The Respondent has not submitted a response to the Complaint. Also, there is no evidence that the Respondent has any authorization to use the Complainant’s trademark or to register domain names containing the Complainant’s trademark KORIAN, nor evidence that the Respondent is commonly known by the disputed domain name.

Besides, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In fact, the Complainant presented evidence that the disputed domain name has been used to link various third-party websites, including to a page that provides PPC links to several different websites related services rendered to the elderly, offered by direct competitors of the Complainant.

The Complainant has not authorized the Respondent to use its mark KORIAN or to register a domain name incorporating the mark. There is no evidence that the Respondent is commonly known by the disputed domain name or has made a *bona fide* or noncommercial fair use of the disputed domain name. The use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark (section 2.9 of the [WIPO Overview 3.0](#)).

The Panel is satisfied that the Complainant has made *prima facie* showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name. This has not been rebutted by the Respondent.

Thus, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name. For this reason, the Panel believes that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

It is clear to the Panel that the Respondent has in all probability registered the disputed domain name with the purpose of taking advantage of the Complainant’s mark.

The Panel finds that the disputed domain name was likely registered to mislead consumers – hence the addition of the term “massage”. Further, the additional terms can surely be considered an allusion to the Complainant’s business and the services rendered in its facilities, a fact from which the Respondent may well profit by giving Internet users the impression that the disputed domain name belongs to the Complainant.

The fact that the disputed domain name leads to a website containing PPC links to various third-party websites related to services rendered to the elderly supports a finding of bad faith in these circumstances.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant.

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain name and that the Respondent registered and is using the disputed domain name in bad faith.

The Panel finds that the Complainant has also proved the third element 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, <korianmassage.com> be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: September 25, 2023