

## **ADMINISTRATIVE PANEL DECISION**

### **Cofra Holding AG and C&A AG v. Zhang Fei, na Case No. D2024-2881**

#### **1. The Parties**

The Complainant are Cofra Holding AG and C&A AG, Switzerland, represented by Abion AB, Sweden.

The Respondent is Zhang Fei, na, China.

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

The disputed domain names <c-and-a-budapest.com>, <c-and-a-hu.com>, <c-and-a-onlinede.com>, <c-a-slovensko.com>, <ceaportugal.com>, and <cundadeutschland.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 9, 2024. On July 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 18, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Not available from registry) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 19, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the first amended Complaint on July 30, 2024 and filed the second amended Complaint on July 31, 2024.

The Center verified that the Complaint together with the first and second 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 27, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on September 6, 2024. 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 Complainants, COFRA Holding AG, along with its subsidiary C&A AG, are Swiss-based companies operating worldwide in the fashion industry.(collectively referred as “Complainant”) The Complainant holds the following trademark registration for the C&A mark:

- European Union trademark registration, reg. No. 000105882, for the C&A trademark, registered on May 17, 1999.

In 1996, the Complainant registered the <c-and-a.com> domain name, which currently directs to its official website.

The Respondent registered the disputed domain names on the following dates:

<c-and-a-hu.com> on June 19, 2023;  
<c-and-a-budapest.com> August 4, 2023;  
<c-a-slovensko.com> on November 2, 2023;  
<ceaportugal.com> on December 15, 2023;  
<cundadeutschland.com> on December 15, 2023; and  
<c-and-a-onlinede.com> on December 23, 2024.

At the time of the Decision, none of the disputed domain names directs to an active website. In the past, according to the evidence provided by the Complaint, the disputed domain name <c-a-slovensko.com> directed to a website prominently displaying the Complainant’s C&A trademark and designed to look like it was affiliated with the Complainant.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its C&A trademark because the disputed domain names reproduce the Complainant’s mark in its entirety. The Complainant argues that the inclusion of the generic terms such as “online”, as well as inclusion or geographical terms, country codes or various permutations of the symbol “&” fail to alleviate the confusion between the disputed domain names and the Complainant’s trademark. The Complainant argues that the addition of the generic Top-Level Domain (“gTLD”) “.com” is insufficient to avoid confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain names because (i) the Respondent has not been authorized or given a permission by the Complainant to use its C&A trademark in the disputed domain names; (ii) there is no evidence that the Respondent is commonly known by the disputed domain names; (iii) the Respondent has not used or made preparations to use the disputed domain names for bona fide offering of goods or services; (iv) the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names.

The Complainant asserts that the Respondent registered the disputed domain names in bad faith, as evidenced by the fact that the Respondent registered them with the Complainant's name and trademark in mind. The Complainant highlights that its trademark registrations significantly precede the registration of the disputed domain names, indicating the Respondent's knowledge of the Complainant's name and mark. The Complainant contends that the Respondent's use of the disputed domain names constitutes bad faith. The Complainant asserts that the disputed domain names are confusingly similar to the Complainant's registered trademark. In the Complainant's opinion, the Respondent is trying to take an advantage of the reputation of the Complainant's trademark. The Complainant argues that the Respondent has been using the disputed domain names to attract, for commercial gain, Internet users to the Respondent's pay-per-click website. The Complainant contends that current non-use of the disputed domain names does not prevent finding of bad faith use of the disputed domain names because the Respondent concealed its identity with assistance of a privacy service provider. In the Complainant's view, the current use of the disputed domain names is in bad faith because the Complainant's trademark is highly distinctive and well-known and the current record suggest implausibility of any good faith use of the disputed domain names.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the disputed domain names:

- (i) the disputed domain names are 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 of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The inclusion of the gTLD ".com" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, "budapest", "hu", "onlinede", "slovensko", "portugal", "deutschland", as well as permutations of the word "and" in different languages and a variety of spellings, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain names.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The evidence on record shows that the Respondent is not commonly known by the disputed domain names. The Respondent is not making legitimate noncommercial or fair use of the disputed domain names or uses it for bona fide offering of goods or services, because neither of the disputed domain names currently directs to an active website and the disputed domain name <c-a-slovensko.com> directed to a website that used to prominently display the Complainant’s trademark and replicate look and feel of the Complainant’s website. The Respondent has not been authorized by the Complainant to use the Complainant’s well known trademark in a domain name.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel notes that the Respondent registered six disputed domain names that incorporate the Complainant’s C&A trademark and include a descriptive term “online”, various permutations of the term “and”, geographical terms or country codes many years after the Complainant’s registration of its C&A trademark. The Respondent’s lack of rights or legitimate interests in the disputed domain names, coupled with the absence of a credible explanation for the Respondent’s choice of the disputed domain names, the well-known status of the Complainant’s trademark and the Respondent’s use of the <c-a-slovensko.com> disputed domain name that directed to a website that used to prominently display the Complainant’s trademark and replicate look and feel of the Complainant’s website indicate that the disputed domain names were registered in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), “bad faith” registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to 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. See Policy, paragraph 4(b)(iv).

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the well-known status of the Complainant’s trademark, the composition of the disputed domain names, the Respondent’s failure to submit a response, as well as Respondent’s concealment of its identity and its use of the false contact details support finding of bad faith use of the disputed domain names in this case.

The Panel finds that the Complainant has established 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 names <c-and-a-budapest.com>, <c-and-a-hu.com>, <c-and-a-onlinede.com>, <c-a-slovensko.com>, <ceaportugal.com>, <cundadeutschland.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: September 20, 2024