

ADMINISTRATIVE PANEL DECISION

CoryxKenshin LLC v. Hoang Dai Ngoc, Dai Ngoc
Case No. D2022-3873

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 Hoang Dai Ngoc, Dai Ngoc, Viet Nam.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 15, 2022. On October 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 (GMO-Z.com RUNSYSTEM) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 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 amendment to the Complaint in English on October 25, 2022.

On October 24, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On October 25, 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 together with the amendment to 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 October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 21, 2022.

The Center appointed Masato Dogauchi as the sole panelist in this matter on November 25, 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a company providing goods including baseball caps and hats and services including online videos featuring video game reviews, video game play with commentary and narration, animated parodies and content, lifestyle, news, and other entertainment in the field of video games. The number of the Complainant's subscribers to its "You Tube" channel named "CoryxKenshin" has increased since the initial use of its mark in 2009. The number was 9.14 million on March 12, 2021 and 14.4 million on September 12, 2022. In addition, the Complainant is operating the website at the domain name <coryxkenshin.com>, registered in February 2016, for selling its products under the trademark CORYXKENSHIN including hats, shirts, hoodies, long sleeve shirts, sweatshirts, water bottles, and stickers.

The Complainant began to use in commerce the CORYXKENSHIN mark in 2009 and the Complainant owns the United States trademark CORYXKENSHIN, Registration No. 6,482,025, registered on September 14, 2021.

The disputed domain name was created on July 22, 2022, and resolves to a website displaying the Complainant's CORYXKENSHIN mark and selling various products similar to those of the Complainant, such as t-shirts, hoodies, and sweatpants.

5. Parties' Contentions

A. Complainant

In respect of language of the proceeding, although the language of the Registration Agreement is Japanese, the Complainant requests that the proceeding be conducted in English as the disputed domain name is in English.

In respect of subject matters, the Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark. Although the disputed domain name has an extra letter "n" to the middle of the Complainant's CORYXKENSHIN trademark, the Complainant contends that Internet users searching and wishing to obtain the Complainant's goods or services offered on the Complainant's website are likely to be mistakenly directed to the Respondent's website. Further, on the basis of well-established authority, the generic Top-Level Domain ("gTLD"), in this case ".com", should be disregarded in assessing confusing similarity.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the Complainant has not permitted the Respondent to use the Complainant's CORYXKENSHIN trademark, the Respondent is not known as the disputed domain name.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. Bad faith registration of the disputed domain name is shown when the Respondent uses the name of an unidentifiable business entity. The Respondent has taken efforts to conceal its identity by not providing their legal name when registering the disputed domain name. This shows that the disputed domain name was registered in bad faith. And, the Respondent is using the disputed domain name making Internet users mistakenly believe that they have reached the Complainant's website. This shows that the disputed domain name is being used in bad faith to sell non-licensed products by the Respondent.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant's request to that effect;
- the Respondent did not reply to the Center's Language of Proceedings email or Notification of Complaint email which were both sent in English and Japanese;
- the disputed domain name is in Latin script and not in Japanese script;
- the disputed domain name resolves to a website in English; and
- the use of the Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent, and unnecessarily delay the proceeding.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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 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 Complainant has rights in the CORYXKENSHIN trademark. The last part of the disputed domain name, *i.e.*, “.com” represents one of the gTLDs, which is irrelevant in the determination of the confusing similarity between the disputed domain name and the trademark. The first part of the disputed domain name, *i.e.*, “coryxkennshin” is different from the CORYXKENSHIN trademark in that an extra letter “n” is added after the letter “n” which firstly appears in the trademark. The CORYXKENSHIN trademark remains clearly recognizable in the disputed domain name. Such misspelling is a typical example of typosquatting. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Therefore, the Panel finds that the disputed domain name, being a typosquatted version of the CORYXKENSHIN trademark, is confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence which is contrary to the Complainant’s contention that the Respondent is not known by the name “Coryxkennshin”, that the Respondent is not authorized or licensed to use the Complainant’s CORYXKENSHIN trademark.

According to prior UDRP decisions, it is sufficient that the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. The Respondent did not reply to the Complainant’s *prima facie* contentions in this proceeding.

Therefore, and considering the Panel’s findings under section 6C., the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

In consideration of the number of the Complainant’s subscribers to its You Tube channel showing the CORYXKENSHIN trademark, it is obvious that the Complainant’s CORYXKENSHIN trademark is well known worldwide. Therefore, it is highly unlikely that the Respondent would not have known of the Complainant’s right in the trademark at the time of registration of the disputed domain name. In addition, the fact that the Respondent has used the Complainant’s CORYXKENSHIN trademark on the website at the disputed domain name reinforces the Panel’s finding that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the use of the disputed domain name, resolving to the website displaying the Complainant’s CORYXKENSHIN mark and selling various products similar to those of the Complainant, shows that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her website by creating a likelihood of confusion with the Complainant’s trademark as to the source of the Respondent’s website. This shows that the Respondent takes unfair advantage of or otherwise abuses the Complainant’s CORYXKENSHIN trademark. See section 3.1.4 of the [WIPO Overview 3.0](#).

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. Therefore, the above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <corykennshin.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: December 8, 2022