

ADMINISTRATIVE PANEL DECISION

Cooperativa Regional de Cafeicultores Em Guaxupé LTDA. – COOXUPÉ v.
shuichunyan, shuichunyan
Case No. D2022-4289

1. The Parties

The Complainant is Cooperativa Regional de Cafeicultores Em Guaxupé LTDA. – COOXUPÉ, Brazil, represented by Grant Attorneys at Law, PLLC, United States of America (“U.S.”).

The Respondent is shuichunyan, shuichunyan, China.

2. The Domain Name and Registrar

The disputed domain name <cooxupe.com> is 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 November 10, 2022. On November 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 amended Complaint on November 19, 2022.

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 November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 21, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 5, 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

It results from the Complainant's undisputed allegations that the Complainant is a business entity registered in Brazil since 1966 and has been in continuous business operations since then, utilizing the COOXUPÉ mark. During the last five years, the Complainant has exported coffee products over USD 4.3 billion worldwide, which is over 10% of all Brazilian coffee exports from 2017 to July 2022.

The Complainant bases its Complaint on an international portfolio of trademarks which consist or contain the verbal element COOXUPÉ, amongst others, U.S. Registration No. 6,026,544 for COOXUPÉ (word mark) filed on October 29, 2018 and registered on April 7, 2020 for goods and services in classes 30, and 35.

The disputed domain name was registered on April 21, 2021. The Complainant asserts that the disputed domain name resolves to a website, which has posted sexually explicit images and videos, as well as the third party websites for online gambling, among other services. At the time of filing of the amended Complaint, the Complainant notes that the disputed domain name is no longer active. However, at the time of this decision, the disputed domain name is active again for a website containing adult content and advertisements related to online gambling and gaming.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name consists of the Complainant's word trademark COOXUPÉ and is therefore identical.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant submits the Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to seek the registration of any domain name incorporating the COOXUPÉ marks. Furthermore, the Complainant brings forward that the Respondent's use of the disputed domain name consists of sexually explicit images linking to pornographic videos on third party websites, as well as links to third party sites providing online gambling, among other services. The Complainant notes, however, that at the time of the filing of this Amended Complaint, the disputed domain name is not active anymore.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. The Complainant contends that the Respondent intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name and to other linked third party websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, which has been used for the posted sexually explicit images and videos as well as the third party websites for online gambling, among other services.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

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

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to the said mark.

The Complainant is the registered owner of U.S. trademark No. 6,026,544 for COOXUPÉ (word mark; filed on October 29, 2018; registered on April 7, 2020).

The disputed domain name consists of the COOXUPÉ trademark in its entirety. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, in cases where a domain name incorporates the entirety of a trademark, or at least where a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing.

Furthermore, it is acknowledged by UDRP panels, that the applicable Top-Level Domain (“TLD”) may be disregarded in determining identity or confusing similarity, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is identical or confusingly similar to the Complainant’s trademark COOXUPÉ pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests in the disputed domain name. In the Panel’s view, based on the unrebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

The disputed domain name resolves to a website with adult content and advertisements for online gambling and gaming. At certain point during the proceeding, no content was displayed on the website to which the disputed domain name resolved. Such use can neither be considered a *bona fide* offering of goods or

services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraphs 4(c)(i) and (iii) of the Policy. In addition, this Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's registered trademarks COOXUPÉ by registering a domain name consisting of that trademark with the intent to attract Internet users for commercial gain.

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's undisputed allegations, the Respondent previously used the disputed domain name for pornographic and gambling contents and then the disputed domain name resolved to an inactive website. However, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use of the domain name does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g., *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. 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;
- (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put (see [WIPO Overview 3.0](#), section 3.3).

In the case at hand, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the distinctiveness of the trademark COOXUPÉ which has existed and has been used since 1966;
- (ii) the Respondent's failure to respond to this Complaint; and

(iii) the fact that the details disclosed for the Respondent by the Registrar are incomplete, noting the courier's inability to deliver the Center's Written Notice.

In addition, due to these circumstances, this Panel concludes that the Respondent knew or should have known the trademark COOXUPÉ when it registered the disputed domain name, and that there is no plausible legitimate active use that the Respondent could make of the disputed domain name.

At the time of this decision, the Panel notes that the disputed domain name resolves again to an active website with adult content and advertisements for online gambling and gaming. The Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's mark.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant is therefore deemed to also have satisfied the third element, paragraph 4(a)(iii) 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 <cooxupe.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: January 19, 2023