

## **ADMINISTRATIVE PANEL DECISION**

**Korian v. Coline CHRETIEN**

**Case No. D2022-4511**

### **1. The Parties**

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

The Respondent is Coline CHRETIEN, France.

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

The disputed domain name <kOrian.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 November 25, 2022. On November 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 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 (Privacy Service Provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 29, 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 December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Fabrice Bircker as the sole panelist in this matter on January 9, 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, Korian, was established in 2003, and provides care services to the elderly and the vulnerable, notably through the management of retirement homes and specialized clinics.

The Complainant is active in six European countries, including France, its country of origin, serves more than 300,000 patients or residents, and employs more than 50,000 people.

The Complainant offers its services under the brand KORIAN, which is notably protected through the following trademark:

KORIAN, European Union Trade Mark No. 005192224, filed on July 11, 2006, registered on August 29, 2007, duly renewed in 2016, and designating products and services of classes 16, 35, 36, 38, 39, 41, 43, and 44.

The Complainant has also an online presence, in particular, through the website available via the <korian.com> domain name, which was registered on May 14, 1999.

Very little is known about the Respondent, except that it is apparently located in France, based on the information disclosed by the Registrar.

The disputed domain name was registered on November 14, 2022.

It does not resolve to an active website, but five MX records have been set up on it.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant requests the transfer of the disputed domain name, and its main arguments can be summarized as follows:

The Complainant contends that the disputed domain name is confusingly similar to its KORIAN trademark, because it reproduces it with the exception of i) the replacement of the letter "o" by the number "0", and ii) the adding of the generic Top-Level Domain ("gTLD") ".com", and because these differences are not sufficient to prevent the KORIAN trademark from being recognizable within the disputed domain name.

The Complainant claims that the Respondent has no rights or legitimate interests in respect with the disputed domain name because i) the Complainant has never given any authorization or permission to the Respondent to register or to use its KORIAN trademark, ii) the Respondent is not in any way related to the Complainant's business, iii) the Respondent is not commonly known under the disputed domain name, and iv) the disputed domain name is not used to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use.

The Complainant argues that the disputed domain name has been registered in bad faith because i) the KORIAN trademark predates the disputed domain name, ii) the KORIAN trademark is well-known in France and abroad, iii) the KORIAN trademark is an arbitrary denomination, iv) any search for "korian" conducted with an Internet search engine leads in the first place to websites relating to the Complainant, and v) the Respondent does not have any rights or legitimate interests in the disputed domain name.

Then, the Complainant contends that the absence of use of the disputed domain name amounts to bad faith use on the ground of the passive holding doctrine.

In addition, the Complaint puts forward that MX records have been activated in relation with the disputed

domain name, which evidences that the Respondent has or will use it in a phishing campaign targeting the Complainant's customers or employees.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- 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.

Besides, paragraph 15(a) of the Rules provides that "[a] Panel shall 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".

Paragraphs 10(b) and 10(d) of the Rules also provide that "[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "[t]he Panel shall determine the admissibility, relevance, materiality, and weight of the evidence".

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Taking the foregoing provisions into consideration the Panel finds as follows.

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

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

The Panel finds that the Complainant is the owner of trademark registrations for KORIAN, such as the one detailed in section 4 above.

Besides, there is no difficulty in finding that the disputed domain name is confusingly similar to the KORIAN trademark.

Indeed, the disputed domain name reproduces the Complainant's trademark, with the sole exception of i) the addition of the ".com" gTLD, and ii) the replacement of the letter "o" by the figure "0".

Regarding the gTLD, it is of constant practice among the UDRP panels that it may be ignored for the purpose of assessing the confusing similarity, because it plays a technical function.

Furthermore, given the important visual resemblance between the letter "o" and the figure "0", the substitution of the zero by the letter "o" obviously cannot prevent a finding of confusing similarity between the

disputed domain name and the Complainant's trademark, which remains clearly recognizable.

As a result of all the above, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

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

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its KORIAN trademark in a domain name registration or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be legitimately commonly known by the disputed domain name.

Furthermore, the disputed domain name resolves to an inactive website, and nothing suggests that the Respondent has made preparations to use it for legitimate purposes.

In view of all the above, the Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The burden of production now shifts to the Respondent to show that it does have some rights or legitimate interests. The Respondent, who has not replied to the Complainant's contentions, has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and therefore that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel notes that:

- the use of the KORIAN trademark predates the registration of the disputed domain name by almost 20 years,
- the KORIAN denomination is a coined word and therefore the corresponding trademark is intrinsically distinctive,
- correlatively, given the near identity of the disputed domain name with the Complainant's trademark (incorporating a minor typo, which may easily be missed by Internet users), said disputed domain name has for sole raison d'être to refer to the Complainant's prior rights;
- it results from the record of the case and from other UDRP panels' decisions that the KORIAN trademark is well-known (see, e.g., *Korian v. Redacted for Privacy (DT) / Kumru Pinar*, WIPO Case No. [D2020-2944](#), *Korian v. WhoisGuard Protected, WhoisGuard, Inc. c/ Chevarin Herve and Name Redacted*, WIPO Case No. [D2021-0091](#) and *Korian v. Zhichao Yang (杨智超)*, WIPO Case No. [D2020-3045](#)),

- the Complainant has demonstrated that a mere search on an Internet search engine reveals its rights on KORIAN in the first results,
- the Complainant originates from France and, when registering the disputed domain name, the Respondent has registered the disputed domain name indicating it is located in France.

In view of all these circumstances, the Panel has no doubt that the Respondent was actually aware of the Complainant's rights when it registered the disputed domain name.

Moreover, the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith use because the present situation clearly falls within the doctrine of passive holding.

Indeed, the disputed domain name is a typo of the KORIAN trademark, which is intrinsically distinctive and well-known. As a consequence, the disputed domain name exclusively and necessarily refers to the Complainant's rights. Besides, the Respondent has registered the disputed domain through a privacy service and in using inaccurate contact details (for instance, the communicated zip code is obviously false). Furthermore, the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use.

In such a context, any good faith use of the disputed domain name by the Respondent seems implausible (see [WIPO Overview 3.0](#), section 3.3).

The Panel is all the more convinced of this considering that the Respondent has set up not only one, but five MX Records for the disputed domain name, which enables it to use said disputed domain name to send and receive emails.

The Panel is of the opinion that the mere act of configuring so many MX Records reveals at least a genuine intent to use the disputed domain name to exchange emails. Given i) the composition of the disputed domain name, in that it can impersonate the Complainant, as well as the typo variation of the Complainant's trademark, which is likely to cause confusion; ii) the clear absence of rights of the Respondent; iii) the fact that the Respondent has concealed his identity through a privacy service and communicated obvious inaccurate contact details to the Registrar; and, iv) the silence kept by the Respondent while invited to participate in the proceedings, such circumstances make it extremely likely that the disputed domain name may be used for fraudulent activities, such as phishing schemes impersonating the Complainant. In any case, in the above-described context, the detention of the disputed domain name in the hands of the Respondent at least represents an unbearable threat hanging over the head of the Complainant.

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of 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 <k0rian.com> be transferred to the Complainant.

*/Fabrice Bircker/*

**Fabrice Bircker**

Sole Panelist

Date: January 19, 2023