

ADMINISTRATIVE PANEL DECISION

COFRA Holding AG, C&A AG v. 胡燕 (Yan Hu)

Case No. D2024-0750

1. The Parties

The Complainants are COFRA Holding AG, Switzerland, and C&A AG, Switzerland, both represented by Abion AB, Sweden.

The Respondent is 胡燕 (Yan Hu), China.

2. The Domain Name and Registrar

The disputed domain name <c-and-a-es.shop> (the “Disputed Domain Name”) is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 19, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 20, 2024, 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 (Not available from registry) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 20, 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 an amendment to the Complaint in English on February 20, 2024.

On February 20, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Disputed Domain Name is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 Chinese of the Complaint, and the proceedings commenced on February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 19, 2024.

The Center appointed Peter J. Dernbach as the sole panelist in this matter on March 27, 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 and its subsidiary C&A AG are privately held companies incorporated in Zug, Switzerland (collectively the "Complainant"). The Complainant conducts business globally in asset management, private equity investment management, apparel retail, sustainable food, and renewable energy. The Complainant's C&A trademark is used in connection with goods and services in the retail apparel and fashion industry. The Complainant's business operations started in the 19th century and the C&A trademark has been used since 1999. In total, the Complainant employs more than 60,000 people across Europe, the Americas, and Asia.

The Complainant owns the following trademarks (collectively, the "C&A Trademarks"):

- European Union trademark C&A (word) no. 000105882 registered for Nice Classes 3, 6, 8, 9, 11, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 35, 36, 38, 39, 41, and 42 since May 17, 1999.
- European Union trademark C&A (figurative) no. 018452270 registered for Nice Classes 9, 14, 18, 24, 25, 28, and 35 since August 13, 2021.
- European Union trademark C&A (figurative) no. 015738545 registered for Nice Classes 9, 14, 18, 24, 25, 28, 35, 36, and 41 since April 19, 2017.

The Complainant registered the domain name <c-and-a.com> on January 23, 1996, which it currently uses to promote the Complainant's business.

The Disputed Domain Name was registered on December 11, 2023 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under paragraph 4(a) of the Policy for a transfer of the Disputed Domain Name.

The Complainant is the owner of several earlier trademark registrations for C&A, all of which have a registration date that predates that of the Disputed Domain Name. The Disputed Domain Name imitates the "C&A" element used in the Complainant's C&A Trademarks, which forms the prominent part of the Disputed Domain Name. The Complainant contends that the difference between the "&" in the Complainant's trademark and the word "and" in the Disputed Domain Name does not add sufficient difference to exclude the likelihood of confusion, because the sign "&" has the same meaning and is both read and pronounced the same way as the word "and". The Disputed Domain Name simply adds "es" and ".shop", which does not reduce the likelihood of being confusingly similar because "es" will be perceived by consumers as the abbreviation for the country Spain, and ".shop" is a generic Top-Level Domain ("gTLD").

The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant confirms that it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the C&A Trademark in any manner. The Respondent's prior webpage does not contain any content associated with a bona fide business. There is no evidence to suggest the Respondent is commonly known by the Disputed Domain Name. Neither is the Respondent making a legitimate, noncommercial, or fair use of the Disputed Domain Name.

The Disputed Domain Name was registered and is being used in bad faith, since the Complainant has been the registered owner of the C&A Trademarks since 1999 and has used the marks in connection with their business. All the Complainant's trademarks were applied for and registered before the Respondent became the owner of the Disputed Domain Name. The Complainant contends that its trademark is well known worldwide, and the Respondent was aware of the trademark when it registered the Disputed Domain Name. In addition, the Respondent used a privacy service provider to conceal the identity when it registered the Disputed Domain Name, which may also constitute a factor indicating bad faith. The Respondent is taking advantage of the Complainant's trademarks to inflict damage on the Complainant's business. Thus, the Disputed Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

Paragraph 10(b) of the Rules provides 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 paragraph 10(c) of the Rules provides that "[t]he Panel shall ensure that the administrative proceeding takes place with due expedition [...]."

The Registration Agreement for the Disputed Domain Name is in Chinese. The Complainant requests the language of the proceeding to be English. The Respondent did not reply to the request of the Complainant. Given the following factors, the Panel decides that the language of the proceeding be English.

- 1) The Disputed Domain Name consists of Latin characters with a gTLD ".shop". Thus, it suggests that the Respondent understands and is able to communicate in English.
- 2) The Complainant is not in a position to conduct these proceedings in Chinese without additional expense and delay due to the need for translation of the Complaint into Chinese; and
- 3) The Center has notified the Parties of the language of the proceeding and the commencement of the proceeding in both Chinese and English. The Respondent was given an opportunity to comment on the language of the proceeding and failed to do so. Nor did the Respondent choose to file a response in either Chinese or English.

Given these facts, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2 Substantive Issues

In accordance with paragraph 4(a) of the Policy, to succeed in this administrative proceeding and obtain the requested remedy (in this case, transfer of the Disputed Domain Name), the Complainant must prove that each of the three following elements are present:

- (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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it owns rights in respect of the C&A Trademarks. The Disputed Domain Name consists of the elements “c-and-a”, which almost wholly incorporates the Complainant’s C&A trademark. The Panel finds that the substitution of “and” instead of “&” does not prevent a finding of confusing similarity, because the C&A Trademarks remain recognizable in the Disputed Domain Name.

The addition of the term “es”, which can be understood to refer to Spain, does not prevent a finding of confusing similarity in the present proceeding. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8).

Also, the Panel determines that the gTLD “.shop” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the mark is recognizable within the Disputed Domain Name. Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights, and the condition of paragraph 4(a)(i) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, the Disputed Domain Name, for the purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy, the Complainant is required to first establish a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The burden of production then shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name.

The Complainant has asserted that it has not licensed or authorized the Respondent to use the C&A Trademarks in the Disputed Domain Name. The Complainant asserts that the Respondent does not own any rights in the C&A Trademarks, nor is there any evidence that the Respondent is commonly known by the

Disputed Domain Name. The evidence in the record does not show the Respondent has made use of the Disputed Domain Name in connection with a bona fide offering of goods or services rather it has been passively held by the Respondent. Neither is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name. The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not provided any arguments to rebut the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Furthermore, disregarding the gTLD, the Disputed Domain Name is very similar to the Complainant's domain name <c-and-a.com> by only adding the term "-es", which may mislead Internet users into believing that the Disputed Domain Name is associated with the Complainant.

Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy explicitly states, in relevant part, that "the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith", but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present proceeding, the Panel notes that the Complainant has registered and used its C&A Trademarks since 1999 both through its own marketing channels, its official site <c-and-a.com>, and through affiliate partners. The Panel further notes the composition of the Disputed Domain Name suggests it may be related to the Complainant's online shop in Spain. As such, the Respondent knew or should have known of the Complainant's well-known C&A Trademarks when the Disputed Domain Name was registered. The registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. The Panel finds that the Disputed Domain Name has been registered in bad faith.

In addition, previous panels have found that, according to the "doctrine of passive holding", non-use of a domain name does not prevent a finding of bad faith. In the present proceeding, the Panel notes that: (i) the degree of distinctiveness or reputation of the Complainant's C&A mark is high, (ii) the Respondent failed to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the Respondent appears to have provided false or incomplete contact details when registering the Disputed Domain Name (the Written Notice was not able to be delivered by courier service). The Panel finds that the non-use of the Disputed Domain Name does not prevent a finding of bad faith in this case.

Thus, the Panel finds that the condition of paragraph 4(a)(iii) has been fulfilled.

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 <c-and-a-es.shop> be transferred to the Complainant.

/Peter J. Dernbach/

Peter J. Dernbach

Sole Panelist

Date: April 10, 2024