

## **ADMINISTRATIVE PANEL DECISION**

CW Brands LLC v. wang yang  
Case No. D2025-0675

### **1. The Parties**

The Complainant is CW Brands LLC, United States of America (“United States”), represented by Kaufman & Kahn, LLP, United States.

The Respondent is wang yang, United States.

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

The disputed domain name <coldwatercreekoutletussale.com> is registered with Hongkong Kouming International Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 19, 2025. On February 20, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 2025, 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 (Undisclosed Registrant of Coldwatercreekoutletussale.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 2025, 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 in English on February 24, 2025.

On February 24, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On February 24, 2025, 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 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 notified the Respondent in Chinese and English of the Complaint, and the proceedings commenced on February 25, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 18, 2025.

The Center appointed Joseph Simone as the sole panelist in this matter on March 20, 2025. 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, CW BRANDS LLC, is a limited liability company organized under the laws of Delaware, United States, specializing in clothing products.

The Complainant has an extensive global portfolio of trade mark registrations incorporating the COLDWATER CREEK mark, including the following:

- United States Trade Mark Registration No. 1861320 in Class 42, registered on November 1, 1994;
- United States Trade Mark Registration No. 1876534 in Classes 14, and 25, registered on January 31, 1995; and
- International Trade Mark Registration No. 1064079 in Classes 03, 04, 14, 16, 18, 20, 21, 24, 26, 29, 30, 35, and 44, registered on July 30, 2010, designating China.

The disputed domain name was registered on February 7, 2025. The evidence provided by the Complainant further indicates that, at the time of filing the Complaint, the disputed domain name did not resolve to an active website. At the time of issuance of this Decision, the disputed domain name resolves to an error page.

#### **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 name.

Notably, the Complainant contends that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's COLDWATER CREEK trade marks, and that the addition of the generic Top-Level Domain ("gTLD") ".com" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant argues that the additional terms "US" and "sale" do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's COLDWATER CREEK mark.

The Complainant asserts that it has not authorized the Respondent to use the COLDWATER CREEK mark, and there is no evidence to suggest that the Respondent has used, or has undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also claims there is no evidence indicating that the Respondent has any connection to the COLDWATER CREEK mark in any way, and that there is no plausible good faith reason for the Respondent to have registered the disputed domain name. The Complainant therefore argues that the registration and any use of the disputed domain name must be 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**

In accordance with paragraph 11(a) of the Rules:

"[...] 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."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for the following reasons:

- The wordings "Coldwater Creek", "US" and "sale" are English language words presented in the Roman alphabet, and the Respondent's ability to create a domain name with such words indicates the Respondent's facility with the English language; and
- The Complainant operates its global business in English and should not be put to the added expense of translating these pleadings if the Respondent fails to participate in the dispute process.

The Respondent was notified in both Chinese and English of the language of the proceeding, and the commencement of the proceeding, and the Respondent did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must judiciously and in the spirit of fairness take into account all relevant circumstances of the case, including the Parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

### **6.2 Substantive Issues**

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

To prevail in a UDRP dispute, the first of three elements a complainant must prove is that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights. It is widely accepted that this 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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Panel acknowledges that the Complainant has established rights in the COLDWATER CREEK trade mark in many jurisdictions around the world. [WIPO Overview 3.0](#), section 1.2.1.

Disregarding the gTLD “.com”, the disputed domain name incorporates the Complainant’s trade mark COLDWATER CREEK in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant’s COLDWATER CREEK mark. The inclusion of the additional terms “outlet”, “us”, and “sale” does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), sections 1.7, and 1.8.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the COLDWATER CREEK trade mark and in showing that the disputed domain name is confusingly similar.

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

The second element that a complainant must prove is that the respondent has no rights or legitimate interests in the disputed domain name. 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 name.

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.

The Complainant asserts that it has not authorized the Respondent to use its trade mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Having reviewed the available record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The composition of the disputed domain name, incorporating the Complainant’s distinctive trade mark with the terms “outlet”, “us”, and “sale”, carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. Meanwhile, no evidence has been provided to demonstrate that the Respondent, prior to the notice of the dispute, had used or demonstrated its preparation to use the disputed domain name in connection with a bona fide offering of goods or services.

There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s prima facie showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

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

The third and final element that a complainant must prove is that the respondent has registered and is using the disputed domain name in bad faith.

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may also 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).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the COLDWATER CREEK trade mark was already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Complainant's registered trade mark rights in COLDWATER CREEK for its products and services predate the registration date of the disputed domain name. A simple online search for the term "coldwater creek" would have revealed that it is an established brand. [WIPO Overview 3.0](#), section 3.2.2.

The Respondent has not presented any evidence or explanation to justify its choice of the terms "coldwater creek", "outlet", "us" and "sale" in the disputed domain name. Considering that the terms "outlet", "us" and "sale" directly relates to the Complainant's business and location, the Panel finds it unlikely that the Respondent's selection of the terms "outlet", "us" and "sale" was coincidental.

The Panel therefore concludes that the Respondent registered the disputed domain name with knowledge of the Complainant's trade mark rights.

When the Respondent registered the disputed domain name, the COLDWATER CREEK trade mark was already widely-known and directly associated with the Complainant's activities. Panels have also consistently found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Considering the reputation of the Complainant's trade mark, the composition of the disputed domain name, and the Respondent's failure to file

a response, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith.

In sum, the Panel concludes that there are no plausible good faith reasons for the Respondent to have registered and used the disputed domain name.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

## **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 <coldwatercreekoutletussale.com> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: April 7, 2025