

Decision for dispute CAC-UDRP-100479

Case number CAC-UDRP-100479

Time of filing 2012-08-30 09:55:27

Domain names topachatci.com

Case administrator

Name Tereza Bartošková (Case admin)

Complainant

Organization RueDuCommerce

Complainant representative

Organization CHAIN AVOCATS

Respondent

Organization PIXYDIS

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The disputed domain name contains Complainant's Community trademark TOP ACHAT in full, which trademark was registered on 9 August 2004 under number 4034211.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The disputed domain name contains Complainant's trademark TOP ACHAT in full, in particular the Community trademark TOP ACHAT, registered on 4 August 2004 under number 4034211. Therefore, according to Complainant the disputed domain name is confusingly similar to Complainant's trademark (Policy, Par. 4 (a)(1)).

According to Complainant Respondent has no rights in the trademark TOP ACHAT. Complainant has no relationships with Respondent. Accordingly, Respondent has no rights or legitimate interests in respect of the domain name (Policy, Par. 4 (a)(1)).

The trademark TOP ACHAT constitutes the dominant element of the disputed domain name. The disputed domain name

resolves to an active internet portal selling the same kind of products that are sold by Complainant. According to Complainant the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(a)(iii)).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown that Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Complainant has established that it is the owner of a Community trademark registration for TOP ACHAT. The Panel notes that Complainant's registration predates the creation date of the disputed domain name.

The disputed domain name incorporates the entirety of the TOP ACHAT trademark as its distinctive element. Many UDRP decisions have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety. The addition of the common, descriptive or non-distinctive element "ci", and the deletion of the space between TOP and ACHAT are insufficient to avoid a finding of confusing similarity.

However, the Panel notes that according to the information submitted by Complainant the two French trademarks (TOP ACHAT, registered on 4 May 2004 under number 3289599, and TOPACHAT.COM registered on 31 January 2001 under number 3079939) have been registered by third parties and not by Complainant; Complainant has not submitted any evidence that these two trademarks have been transferred to Complainant. The Panel thus decides the complaint only on the basis of the Community trademark.

The Panel finds that Complainant has proven that the disputed domain name is confusingly similar to Complainant's trademark.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name.

The Panel also finds that the disputed domain name has been registered and is being used in bad faith by Respondent. This is particularly true as Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or of a product on its website or location. In addition, Respondent has not responded to the allegation of Complainant that the website of Respondent resolves to an active internet portal selling the same kind of products that are sold by Complainant on the website of Complainant which uses the TOP ACHAT trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **TOPACHATCI.COM**: Transferred

PANELLISTS

Name	Dinant T.L. Oosterbaan
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DATE OF PANEL DECISION **2012-09-28**

Publish the Decision
