# Decision for dispute CAC-UDRP-100517

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| Case number | CAC-UDRP-100517 |
| Time of filing | 2012-10-24 10:56:24 |
| Domain names | remi-martin.com |

## Case administrator

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| Name | Tereza Bartošková (Case admin) |

## Complainant

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| Organization | E. REMY MARTIN & C° |

## Respondent

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| Name | Remi Debesse |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which would relate to the disputed domain name or to the disputed decision.

IDENTIFICATION OF RIGHTS

The Complainant is E. REMY MARTIN & C°, a cognac producer based in France.

The Complainant gives evidence of several trademark registrations with the terms “REMY MARTIN” in several countries. Trademark 508092 (registered in 25 countries, but not France) and US trademark 0749501 are verbal trademarks. All other trademarks the Complainant brings evidence of are complex marks which combine the words REMY MARTIN and a drawing. These words sometimes form a minor part of the mark, as it is the case with trademark 203744, for example, which is a photo of a bottle which tag bears REMY MARTIN at its bottom.

The Complainant also mentions it has several domain names (remymartin.com registered in 1997, remy-martin.com registered in 1998, remymartin.net, remy-martin.net, remymartin.fr, remy-martin.fr, remymartin.in, remymartin.asia, remy-martin.asia, remymartin.cn, remy-martin.cn, remymartinvsop.com, remymartin.us, remymartinv.com, remymartin-xohonors.com).
UDRP rules being relevant only to trademarks, those domain names will not be taken into account. The Panel nevertheless observes that the list provided by the Complainant does not include remimartin.com, close to the disputed domain name REMI-MARTIN.COM.

The Respondent contends his first name is Remi and that he was raised by his aunt Ms Martin, and that choosing REMI-MARTIN.COM as his domain name is “[his] way of paying tribute to [his] aunt to carry her name”.

FACTUAL BACKGROUND

The Respondent has registered the domain name REMI-MARTIN.COM on February 2, 2011. The registration was made through a proxy and initially showed “WhoisGuard” in the Registrant Contact field. After a request for verification,

NameCheap Inc. confirmed it was the registrar. It informed the CAC that: “The current registrant is not WhoisGuard, but:
Name: Remi Debesse
Address: 4 impasse paul verlaine
Paris
paris, 750015
FR
Phone: +82.1082898061
(...)
Email: remidebesse@gmail.com”
The registrar also included the Signup IP and date, and activity information (last login IP and date).
The registrar confirmed the language registration was English.

On October 17, 2012, a letter of cease and desist was e-mailed to the Respondent by NameShield on behalf of the Complainant (the Panel notes it is unsure whether the sending of such a letter complies with article 4 of the French Act of December 31, 1971 which regulates legal activities and reserves to attorneys the privilege of representing clients)
The Complainant states the Respondent has not replied. This is not disputed by the Respondent. However, the Panel observes the Complaint was filed on October 24, very little after the sending of the cease and desist letter, a fact that may explain why the Respondent did not answer.

The disputed domain name is used for content organized in the form of a WordPress blog. The Respondent, who writes his “website’s main field of business is online marketing and entrepreneurship”, is the user of the name REMI-MARTIN. The pages “displays help content on the use of web applications such as Google, PayPal, Twitter…” as the Complainant puts it.

A ‘tagline’ lies at the bottom of the pages. Written in French, it reads: “remi-martin.com - Idées pour devenir libres et financièrement indépendants. Une vue nouvelle du marketing.”

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant’s contentions are a patchwork of arguments which are not clearly organized or structured:

“The Complainant contends the disputed domain name is confusingly similar to its well-known and distinctive trademark “REMY MARTIN” registered and used since 1957.
The letter “Y” is simply replaced by the letter “I”.
Further, the domain name is phonetically similar to the Complainant’s trademark.

Moreover, the Complainant contends the addition of a gTLD “.COM” and is not sufficient to escape the finding that the domain names are confusingly similar to its trademark.

The brand "REMY MARTIN" is so well known in the world than a “Google” search of words “REMY MARTIN” or “REMI MARTIN” displays several results, related to the Complainant.

On those facts, the Complainant contends that domain name is confusingly similar and phonetically identical to the trademarks “REMY MARTIN” in which the Complainant has prior rights.”

“According to the WIPO case no. D2003-0455, “Croatia Airlines d.d. v. Modern Empire Internet Ltd.”, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

On the website (www.remi-martin.com), the Respondent informs us that its name is “Remi martin” but according the whois on annex 1, the registrant of the disputed domain name is “WhoisGuard” without address or email. The Complainant contends that the Respondent is not called “Remi martin” and used a proxy registration service to hide its real identity.
Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.
See NAF FA139720 Tercent Inc. v. Lee Yi

The Complainant contends in further that the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant’s business.
The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant also contends that the Respondent has no legitimate interests in respect of the domain name and he is not related in any way with the Complainant.
Indeed, the website in connection with the disputed domain name displays help content on the use of web applications such as Google, PayPal, Twitter...
Insofar as the Respondent's name is not actually "remi martin", the Respondent has no legitimate interest to register and use the domain name to the aforementioned content.

Moreover, a letter of cease and desist has been sent to the Respondent to justify the purpose of this registration and use to which Respondent has not justified this registration.

According the website (www.remi-martin.com), the Respondent is specialized in Internet Marketing. The Respondent displays this information in French language: “remi-martin.com - Idées pour devenir libres et financièrement indépendants. Une vue nouvelle du marketing.”

The Complainant contends that the Respondent registered domain name phonetically similar to the Complainant’s brand to redirect Internet traffic to its website.”

“The domain name is confusingly similar and phonetically identical to the trademark “REMY MARTIN”.
Previous UDRP panels ruled that “a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant’s site to the Respondent’s site” (see Edmunds.com, Inc v. Triple E Holdings Limited, WIPO Case No. D2006-1095).

The Respondent is not called “Remi Martin”. Therefore, there is no reason in good faith to register this domain name.
According the whois on 26 October 2012, the Respondent is “Remi Debesse” and not “Rémi martin”. Moreover, the Respondent’s address is located to “4 impasse paul verlaine Paris, paris 750015” but this address doesn’t exist.

The information regarding the real registrant is hidden by a proxy registration service.
Respondent’s use of the proxy registration service is cumulative evidence that provides additional support to the Panel’s finding of bad faith, in addition to the evidence cited above. See Advance Magazine Publishers Inc. d/b/a Condé Nast Publications v. MSA, Inc. and Moniker Privacy Services, WIPO Case No. D2007-1743.

The disputed domain name is used to display information in relation with web applications. There is no reason to register this domain name for this activity. The defendant may register another domain names more relevant to its purpose. The Complainant contends that the Respondent created the domain name to divert the Internet traffic with registering a domain name phonetically identical to a famous trademark.”

The Complainant also claimed its trademark [sic – use of the singular form] is well-know and cited four UDRP decisions. It annexed several documents as evidence to the arguments above. The Panel requested further evidence and received other materials from the Complainant.

RESPONDENT:

The Respondent contends as follows:

“I do understand the concerns expressed by E. REMY MARTIN & C° however their complaint is non funded [sic] as the name Martin is the most common family name in France.

According to several reliable websites over 220 000 people in France (http://www.journaldesfemmes.com/ http://www.genealogie.com/ ) carry this name and it is therefore unfair to forbid anybody, especially in France, to own a domain name containing the word Martin.

As you have noticed my first name is Remi and I have actually been raised by my aunt (whose name is Monique Martin) and therefore have chose remi-martin.com as my domain name. It was my way of paying tribute to my aunt to carry her name and not in any way trying to damage E. REMY MARTIN & C° brand.

Besides, as mentioned in the complaint my website's main field of business is online marketing and entrepreneurship. Therefore I have never tried to deceive my audience nor advertised or sold any alcoholic beverages.
I have never confused my audience by even closely mentioning anything related to E. REMY MARTIN & C° field of business.

I believe E. REMY MARTIN & C° customers are smart enough to understand that a Korean born adoptee raised in France has nothing to do with E. REMY MARTIN & C°.
To summarize, I think it is unjustified to file a complaint when my name contains the most common family name in France. I do not believe Paul Smith (the designer in the UK) is filing a complaint against all the other Paul Smith living around the world.

I have never tried to create any confusion in my follower's minds nor tried to benefit from the similarity in name with E. REMY MARTIN & C°.
Beside the spelling of Remi is different and I trust your customers and my readers to be able to tell the difference between a "i" and a "y".”
The Respondent adds:
“If E. REMY MARTIN & C° still believe my domain name could cause confusion, I am willing to negociate the handling of my over name over E. REMY MARTIN & C°.

Changing my domain name would cause a lot of work (since I would also have to change my videos and youtube channel) and I might lose some of my potential customers following a change of name as people know me as Remi Martin. Therfore [sic], I am willing to consider any offer above 5 000 euro.”

Except two links (to the homepage of websites and not to a resource in particular), the Respondent did not bring any evidence to support the arguments above. Though the Panel asked for evidence, the Respondent did not reply to this request.

RIGHTS

Is the domain name identical or confusingly similar to a trademark or service mark in which the complainant has rights?

Though the Complainant refers to several trademarks it owns, it does not state clearly to which of these marks the domain name would be identical or confusingly similar. The Complainant indeed contends that “the disputed domain name is confusingly similar to its well-known and distinctive trademark “REMY MARTIN” registered and used since 1957”. Among all the trademarks listed in the Complainant’s evidence, the Panel finds only one which was registered in 1957, which is trademark 203744. This is the trademark the Panel quickly described above, which consists of the shape of a bottle where

the name Remy Martin cannot clearly be seen and occupies less than 10% of the space used by the sign. This trademark is for example visible at http://www.wipo.int/romarin/images/20/37/203744.jpg

Is the domain name REMI-MARTIN.COM confusingly similar to this device trademark which is the shape of the bottle on which two tags are stuck, one of them bearing several words like “Fine Champagne”, “Cognac” and “REMY MARTIN”?

The fact that the trademark includes a design element does not preclude making out confusing similarity for the purposes of the test under the UDRP Policy. In other disputes Panels have applied the test set out in paragraph 4(a)(i) of the Policy in respect of a device trademark, and decided that the graphical elements of the mark need not be considered in any assessment of identity or confusing similarity (an early example can be found in WIPO decisions D2000-0036 or D2000-0493). As graphic elements cannot be reproduced in a domain name, these Panels have seen the word element as what in practice internet users type into their browser to access to the content to which the domain name points.
Panels are however split on how to assess the likelihood of confusion between a device mark and a domain name. In several decisions they found that since a domain name cannot incorporate design elements, it cannot be identical to the stylized version of a trademark (for example, WIPO decisions D2000-0699 or D2003-0654 – in this latter case the Panel did not find that the domain name was identical to a registered trademark in respect of a logo, but nevertheless found there was confusing similarity because the word elements of the device mark were a “prominent feature”).

This Panel finds the latter approach more rigorous in presence of a device trademark where the words REMY MARTIN form a minor part of the sign. Should the Panel follow this approach in view of the sole trademark implicitly referred to by the Complainant, it would conclude that the Complainant has NOT made out its case with regard to the relevant elements of paragraph 4(a)(i) of the Policy.

The Panel nevertheless cannot ignore the Complainant gave evidence of distinct rights it has on verbal trademarks REMY MARTIN which pre-date the domain name registration. The Panel will take these signs into account, though it blames the Complainant for lacking rigor in its claims. It is for the Complainant to prove its case and to put its case in the best way, not for the Panel to second guess the Complainant’s approach.

The Complainant contends the disputed domain name is confusingly similar to the trademark REMY MARTIN because “[t]he letter “Y” is simply replaced by the letter “I”. Further, the domain name is phonetically similar to the Complainant’s trademark”. Such remarks are true in the perspective of a francophone speaker, where I and Y have the same pronunciation [i]. In other languages, the Y can be pronounced differently: [aɪ] in English, [u] in Finnish… As the Complainant’s verbal trademarks are registered in several countries, the phonetic similarity with the disputed domain name (which itself can have several pronunciations) could have been discussed more in detail by the Complainant.

The Respondent writes he “understands the concerns expressed by” the Complainant. This means he does not reject the likelihood of confusion. The Respondent defends himself by saying “Martin is the most common family name in France”. Though this argument is substantiated (it is actually the sole fact for which the Respondent pointed to evidence), it is not a disagreement with the Complainant’s contention.
The Respondent writes: “I believe E. REMY MARTIN & C° customers are smart enough to understand that a Korean born adoptee raised in France has nothing to do with E. REMY MARTIN & C°”. This belief is not supported by any evidence whatsoever. The fact that the Respondent would be “a Korean born adoptee raised in France” is indifferent, as the profile of the registrant, like the content of the website associated with a disputed domain name, is irrelevant to the comparison between this domain name and the Complainant’s trademark under the UDRP. Under the UDRP, the test for confusing similarity is limited to the comparison between the trademark and the domain name to determine the likelihood of confusion.
The Respondent also writes: “I have never tried to create any confusion in my follower’s minds”. Be this true or not, what matters is not the registrant’s intent, but the effect for third parties.

The Respondent notes “the spelling of Remi is different and I trust your customers and my readers to be able to tell the difference between a "i" and a "y"." Here, the Respondent gives an exact opposite argument to the Complainant’s (who argues: “The letter “Y” is simply replaced by the letter “I”. Further, the domain name is phonetically similar to the

Complainant's trademark"). Neither the Respondent nor the Complainant try to give evidence that this one letter difference distinguishes the signs or create confusion. This is likely to leave the Panel undecided (and an undecided Panel would conclude that the Complainant's case is not made).

Nevertheless the Panel observes there are several references to France in the parties' contentions:
- it is the State where the Complainant is based,
- it is the sole State to which the Respondent refers,
- the Respondent has provided the registrar with an address in Paris, capital of France.
In view of these elements, it is clear that the dispute has ties with France. It is, implicitly, in the perspective of French language that parties elaborate upon the risk of confusion. In this perspective, the disputed domain name REMI-MARTIN.COM can be deemed confusingly similar to the REMY MARTIN verbal trademark.

The Panel finds that the domain name REMI-MARTIN.COM is confusingly similar to a trademark REMY MARTIN in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Does the Respondent have rights or legitimate interests in respect of the disputed domain name?

The Complainant contends that the Respondent has no rights legitimate interests in respect of the domain name. The Complainant correctly reminds the Panel that is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant contends the Respondent's name is not Remi Martin, contrary to what the Respondent pretends on the website associated with the disputed domain name. The Complainant observes that the whois information related to this domain name mention "Remi Debesse" as the registrant (and that other information he provided cannot be verified).

The Respondent writes: "my first name is Remi and I have actually been raised by my aunt (whose name is Monique Martin) and therefore have chose remi-martin.com as my domain name". The Respondent does not bring evidence to support his assertion that his name or nickname is actually Martin, or that he is being know under the name of Remi Martin. The Respondent was formally invited by the Panel to submit an identity document or other convincing documents. He did not reply.

The Respondent also argues: "According to several reliable websites over 220 000 people in France (http://www.journaldesfemmes.com/ http://www.genealogie.com/ ) carry this name and it is therefore unfair to forbid anybody, especially in France, to own a domain name containing the word Martin". Though it agrees with the Respondent that many people can claim a legitimate interest in registering Martin in a domain name, the Panel observes that the Respondent still does not give evidence why HE could personally have such a legitimate interest.

As the Respondent does not rebut the Complainant's contention that he has no rights or legitimate interests in the disputed domain name, the Panel will accept the Complainant's claim.

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

BAD FAITH

Has the domain name been registered in bad faith and is it being used in bad faith?

The Complainant observes that "[t]he disputed domain name is used to display information in relation with web

applications", then writes: "There is no reason to register this domain name for this activity. The defendant may register another domain names more relevant to its purpose". The Complainant also contends that "the Respondent created the domain name to divert the Internet traffic with registering a domain name phonetically identical to a famous trademark". That there would be a diversion is not substantiated. The Complainant acknowledges that the disputed domain name is used for services that have no connection with its products.
The Respondent adds: "my website's main field of business is online marketing and entrepreneurship. Therefore I have never tried to deceive my audience nor advertised or sold any alcoholic beverages." At the moment the Panel visited the website, it actually did not find any content related to the Complainant's activity.

The Respondent also affirms: "I have never tried (…) to benefit from the similarity in name with E. REMY MARTIN & C°". Though this may have been true before the proceedings, the Respondent suddenly offers to sell the name to the Complainant, writing: "I am willing to consider any offer above 5 000 euro."
This sale offer comes without any initial proposal made by the Complainant. It also comes from someone who previously wrote that he wished to pay tribute to his aunt by choosing to include her name in the domain name.
These circumstances raise serious doubt as to the sincerity of the Respondent. Though the Panel could have been inclined to believe the disputed domain name was not used in bad faith, this unexpected and unsolicited sale offer related to a name to which the Respondent apparently showed attachment is suspect.

This leads the Panel to think the Respondent actually wanted to register REMI-MARTIN.COM to take personal advantage of the value such a name can have.
The Complainant indeed has brought evidence that the trademark REMY MARTIN is well known in France. The Panel (who confesses to be ignorant of the alcohol sector) was first not convinced that this sign was renowned. It thus requested additional from a Complainant who contended that "The brand "REMY MARTIN" is so well known in the world that a "Google" search of words "REMY MARTIN" or "REMI MARTIN" displays several results, related to the Complainant". To the Panel, this is not sufficient evidence. The sole fact that Google "displays several results" cannot in itself illustrate that the brand is well known, since it is expected from a search engine to return relevant results.
The Complainant also wrote it "has received numerous decisions in its favor in which Panels confirmed the notoriety of its trademark"… but referred to four UDRP cases only.
In "WIPO Case D2012-0735 E. Remy Martin & Co vs Giammario Villa", this Panel has noted that the notoriety was uncontested as the defendant did not respond. This Panel is not sure whether the use of "uncontested" was due to the lack of response or was a general statement by the Panelist in that case. This Panel also remains doubtful after reading the "Case D2011-0523 E. Remy Martin & Co vs PrivacyProtect.org, Domain Admin / Ke Zhao" where it was also said that the notoriety is "undisputed" in the absence of a response.
In "WIPO Case D2001-1026 E. Remy Martin & Cie. vs Ramy Fahel", the Panel noted that the trademark REMY MARTIN was "widely used and broadly known", but this was… eleven years ago, whereas trademark lawyers know that the fame of a distinctive may changes throughout the years.
In "WIPO Case D2012-0077 E. Remy Martin & C° vs Jerome Salem (Trednet)", the trademark was deemed renowned in particular on the "French territory". As the dispute over the domain name REMI-MARTIN.COM has connections with the French territory, this Panel can use this UDRP decision as a relevant precedent, along with the additional evidence brought by the Complainant following the Panel's request.

The disputed domain name is confusingly similar to a trademark the Respondent knew was renowned. At the time he registered REMI-MARTIN.COM, and during the whole duration of the registration, he provided the registrar with fake details (non-existent address in Paris and fax number), and did not explain why he did so – an additional clue of his bad faith.

For all these reasons, the Panel is inclined to believe 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

[See above]

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **REMI-MARTIN.COM**: Transferred

## PANELLISTS

| | |
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| Name | **Prof. Cédric Manara** |

DATE OF PANEL DECISION 2012-12-10

Publish the Decision