Decision for dispute CAC-UDRP-100540

Case number	CAC-UDRP-100540
Time of filing	2012-11-29 09:56:59
Domain names	LOUIS-XIII.MOBI

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	E. REMY MARTIN & C°

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	jiang yuanhua

OTHER LEGAL PROCEEDINGS

Not Applicable

IDENTIFICATION OF RIGHTS

The Complainant has to the satisfaction of the panel shown to be the owner of the following protected rights:
Registered trade/service mark
Registered in several countries
Registered combined/figurative trade/service mark
Well-known/famous mark

which are then further enunciated in the reason for the decision below

FACTUAL BACKGROUND

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

Please see also cases:
INDRP/187 <louisxiii.in> E. REMY MARTIN & C° vs Domain Solutions
INDRP/188 <louis-xiii.in> E. REMY MARTIN & C° vs Domain Master

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

NO RIGHTS OR LEGITIMATE INTERESTS

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 (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the 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

Given that
1. the Complainant is the producer of the “Louis XIII” cognac and that the Brand “Louis XIII” is composed of three limited collections:
Louis XIII
Louis XIII Rare Cask
Louis XIII Black Pearl

which are sold worldwide, such as:
Asia and others: 52.6%
Americas: 32.8%
Europe: 14.6%

and that
2. the Complainant owns numerous trademark registrations with the term “Louis XIII” in several countries, such as:

Trademark Country Registration Number Registration Date
LOUIS XIII China G623068 08.19.1994

LOUIS XIII;REMY MARTIN China 4588080 07.28.2008

LOUIS XIII DE REMY MARTIN China 3176665 02.21.2004

LOUIS XIII REMY MARTIN GRANDE CHAMPAGNE COGNAC China 3176214 03.28.2008

Louis XIII Grand Champagne Rémy Martin International 465058 14.12.1981

LOUIS XIII BRAND International 623068 19.08.1994

LOUIS XIII DE REMY MARTIN International 629594 04.01.1995

LOUIS XIII DE RÉMY MARTIN CARE CASK International 1027200 17.12.2009

LOUIS XIII DE REMY MARTIN International 1030355 30.12.2009

and that

3. the Complainant owns and communicates on the Internet through various websites worldwide; the main one is “www. louis-xiii.com” (registered on 21/01/2003), but the Complainant has also registered numerous domain names similar to trademark “Louis XIII” such as:

louis-xiii.fr registered on 28/03/2007
louisxiii.fr registered on 25/04/2007
louisxiii.in registered on 24/05/2010
louis-xiii.in registered on 13/09/2010
louisxiii.cn registered on 17/09/2007
louis-xiii.cn registered on 23/03/2007
louisxiii.com.cn registered on 17/09/2007
louisxiii.asia registered on 04/12/2007
louis-xiii.asia registered on 10/12/2007
louisxiii.net registered on 04/05/2011
louisxiii.de registered on 11/03/2008

and that

4. the disputed domain name < louis-xiii.mobi > has been registered on 23/08/2012 and that

5. there appears to be no legitimate reason or corresponding rights for which the Respondent could have registered the disputed domain name and that

6. there appears to be no legitimate reason for which the disputed domain name is currently being used and the Domain Name appears to have been registered in bad faith. In this latter respect the Panel is following the reasoning as previously cited in Thiercelin vs. MEDICALECPO.com as expounded in Telstra Corporation Limited v. Nuclear Marshmallows (telstra.org) which construed "use" broadly to include inactive use. It stated: "[P]aragraph 4(b) recognises that inaction (e.g. passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith." Passive holding is explicitly alleged by the Complainant and has also been closely looked at by the Panel which finds that one of the critical factors in this case is the lack of evidence of good faith use. If one is in good faith when registering a domain name, then the intention is understandably to use it for the purposes of one's business or activity. If it remains unused for an unreasonable length of time then such registration is open to accusation of constituting „passive holding“ Irrespective of whether the domain name was registered before or after some of the Complainant's marks, the current holder of the domain name does not seem to have used it or currently be using it. In fairness to all parties concerned, this Panel would have been prepared to consider, say, a case of genuine identical names established in different jurisdictions which just happened to be identical by pure co-incidence. In this case however we received no evidence which may have persuaded one that such was the case and when a TLD lies un-used for a length of time and this lack of use is then un-contested, the allegation of bad faith specifically made in this case regarding „passive holding“ remains un-challenged so on the balance of probability one is inclined to accept it. The panellist personally tried loading the domain (several weeks or months after the Complainant claimed to have done so) but to no avail. Had one found a genuine business there or some form of appropriate use then this decision would have been made more difficult. As it is, with no apparent good faith use and in a no response situation it is reasonable to accept the complainant's allegation since no contrary evidence was received nor could one independently detect any proof to the contrary."

In the light of the above, denying the use of the contested domain name to the Complainant would unreasonably prevent the trademarks owner from using the rights conferred by his marks and it is therefore reasonable and appropriate within the

letter and intent of the UDRP rules that the complaint is accepted and domain name transferred to the Complainant.

The Panel finds all of the Complainant's contentions to be reasonable and upholds its request to have the disputed domain "louis-xiii.mobi" transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOUIS-XIII.MOBI**: Transferred

PANELLISTS

Name	**Joseph Cannataci**

DATE OF PANEL DECISION 2013-01-21

Publish the Decision