Decision for dispute CAC-UDRP-100617

Case number	CAC-UDRP-100617
Time of filing	2013-06-19 11:25:16
Domain names	rudcommerce.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	RueDuCommerce

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Organization	TOPNET

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

RIGHTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant has shown that Complainant owns numerous trademark registrations containing or consisting of terms “RUE DU COMMERCE” in France and the EU (Community trademarks), i.e.:

• French trademark « WWW.RUE DU COMMERCE.COM », registered on 29 July 2005 under number 3374566 goods and services class 9, 16, 28, 35, 38, 41, 42.

• French trademark « RUE DU COMMERCE », registered on 27 June 2000 under number 3036950, for goods and services class 9, 16, 28, 35, 38, 41 et 42,

• Community trademark « RUE DU COMMERCE.COM », registered on 14 May 2009 under number 8299381 for goods and services class 16, 35, 36, 37, 38, 41, 42

• Community trademark « RUE DU COMMERCE », registered on 14 May 2009 under number 8299356 for goods and services class 16, 35, 36, 37, 38, 41, 42.

FACTUAL BACKGROUND

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

1.
The Complainant - RueDuCommerce Company - has been registered on April 27th, 1999 under the number B 422 797 720 R.C.S. BOBIGNY. It owns the above portfolio of Trademarks covering in particular internet-order selling business activities on web sites accessible in particular at the addresses www.rueducommerce.com and www.rueducommerce.fr.

According to the Complainant's undisputed allegations, RueDuCommerce has gained an important fame among the French net surfers and consumers. It is now a major e-merchant in France whose honorability and reliability are known from the Internet users.

2.
The Complainant further alleges that internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

The disputed domain name “rudcommerce.com” has been registered on March 19th 2013 and is currently registered on the name of the Respondent. According to the Complainant and evidence provided, the website is not operated.

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

1.
Based on the undisputed multiple trademark registrations cited by the Complainant (listed above) the Panel is satisfied that the Complainant has rights in the trademark RUE DE COMMERCE. The Respondent did not challenge these allegations.

2.
The challenged domain name is confusingly similar to the Complainant’s trademarks and company name RUE DE COMMERCE. The only difference is that compared to said prior rights, two letters have been removed. The Panel considers this a an obvious misspelling of the trademark/company name and therefore, in accordance with the consensus view finds

the domain name to be confusingly similar to such trademark/company name, since the misspelled prior rights remains the dominant or principal component of the domain name. In addition, these differences make, at least no phonetical difference likely to exclude confusing similarity between the Complainant's rights and the disputed domain name.

3.
Furthermore, as a result of the Complainant’s undisputed allegations and without any evidence from the Respondent to the contrary, the Panel is satisfied that the Complainant has also proven the second and third element of the UDRP:

a)
Indeed, the Complainant stated that the Respondent has no rights in the trademark RUE DE COMMERCE. In particular, 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.

b)
Finally, the Panel is satisfied that the Respondent registered the disputed domain name and is using it in bad faith.

With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith.

In the case at hand, the Panel is satisfied that the cumulation of all the circumstances of the case are found to be indicative of bad faith: (1) According to the Complainant's undisputed allegations, his trademark has a reputation amongst French internet consumers; (2) the Respondent did not file any response to the complaint; (3) the Respondent did not react on the Complainants two warning letters sent before the Complaint has been filed (see decision of this Panel in CAC-case No. 100461 - LESRUESDUCOMMERCE.COM and LESRUESDUCOMMERCE.NET).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RUDCOMMERCE.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2013-08-15

Publish the Decision