Decision for dispute CAC-UDRP-100708

Case number	**CAC-UDRP-100708**
Time of filing	**2013-11-21 16:02:24**
Domain names	**bitercointreau.info, cointreaudrogues.info, cointreaupyroxene.info**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**COINTREAU**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Organization	**Telnet Marketing**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceeding which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant claims rights on several trademarks including the distinctive name COINTREAU® (either consisting only of the name COINTREAU® or in addition to a device), without citing any of these trademarks. There is not even a list of the trademarks. He just refers to the exhibit 2.

The Complainant owns and communicates on the Internet through various domain names including the distinctive name COINTREAU®. The main website is www.cointreau.com. The domain name <cointreau.com> was created on October 11, 1995.

FACTUAL BACKGROUND

Founded in 1849 in Angers by Adolphe Cointreau, a confectioner, and his brother Edouard-Jean Cointreau, the French company COINTREAU (see the website at: www.cointreau.com) produces a liqueur made of orange peels.

COINTREAU is now a branch of the REMY COINTREAU Group.

The main activities of this Group are the production of cognacs, liquors, rums and spirits. 95% of production is sold outside France.

On September 12, 2013, a cease-and-desist letter has been sent to the Respondent by email (telnetmarketing@gmail.com) and by registered mail to inform him about the Complainant's opinion about the three domain names registrations related to its trademark COINTREAU®. A reminder has been sent on October 10, 2013.

The Respondent has not provided any response to these letters.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

a) Confusing similarity
The disputed domain names <bitercointreau.info> (registered on August 10, 2013), <cointreaudrogues.info> (registered on July 26, 2013) and <cointreaupyroxene.info> (registered on August 17, 2013) are confusingly similar to its trademarks and branded goods COINTREAU®. Indeed, the trademark COINTREAU® is reproduced in its entirety.
The Complainant contends that the mere addition to the dominant, distinctive and well-known trademark COINTREAU® of the generic, descriptive and defamatory terms « BITER », « DROGUES » or « PYROXENE » does not prevent any likelihood of confusion between the disputed domain names and the earlier trademark COINTREAU®.

Finally, the name COINTREAU® is so well distinctive that the addition of the terms « BITER », « DROGUES » and « PYROXENE » will not have any impact on the relevant consumers. Thus, these consumers will believe that the disputed domain names are associated with the Complainant's trademark COINTREAU®.

b) Right or legitimate interests

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, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

In this case, the Complainant states that the Respondent is not affiliated with him nor authorized by him in any way.

The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent is not commonly known as "COINTREAU" and the WHOIS information is not similar to the disputed domain name.

Moreover, a cease-and-desist letter and a reminder have been sent to the Respondent in order to justify himself about his rights on the name COINTREAU, if any. The Respondent has not provided any response to these letters.

The disputed Domain Names resolve to pages that only mention "403 - Forbidden: Access is denied".

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain names.

c) Registered and used in bad faith

As shown above, the disputed domain names <bitercointreau.info>, <cointreaudrogues.info> and <cointreaupyroxene.info> are confusingly similar to the well-known trademark COINTREAU®.

Given the distinctiveness of the Complainant's trademark and its reputation it is reasonable to infer that the Respondent has registered these domain names with full knowledge of the Complainant and his trademarks and for the purpose of misleading and disrupting the business of the Complainant as he added defamatory terms to the name “COINTREAU”.

Furthermore, the Respondent’s websites are inactive, that increase his bad faith in this matter.
As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Complainant relies on prior UDRP decisions :
- Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003;
- CBS Broadcasting, Inc. v. Dennis Toeppen, WIPO Case No. D2000-0400.
- WIPO case No. D2001-1085, Cointreau SA, Remy Cointreau v. Greenhouse Inc.
- WIPO case No. DCO2010-0019, CLS Rémy Cointreau v. Luke Skywalker, X Wing

The Complainant concludes that the Respondent has registered and is using the disputed domain names in bad faith.

The Complainant therefore requests the transfer of the disputed Domain Names, not to use them but to avoid any third party to register them later.

RESPONDENT: NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Panel examined the exhibit 2 and could check the trademarks' rights, such as for example the French trademark COINTREAU n° 1 333 772 and the Community trademark COINTREAU n° 008809964. There is no evidence that the American trademark is in the name of the Complainant.

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

To prevail in the proceedings under the Uniform Domain Name Dispute Resolution Policy, the Complaint must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

As indicated under Paragraph 4 (a) of the Policy, the Complainant must prove that each of these three elements is present.

Likewise, under Paragraph 4 (c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in his response to the complaint by proving, among others, the circumstances mentioned under this paragraph of the Policy.

a) Confusing similarity

The Domain Names <bitercointreau.info>, <cointreaudrogues.info> and <cointreaupyroxene.info> incorporate the Complainant's trademark COINTREAU and merely respectively adds thereto the word "biter", "drogues" and "pyroxene" which are generic.
Whereas "biter" refers to the taste of the drink, "drogues" is the translation of "drugs" into French and "pyroxene" is the name of a mineral.
As stated in many UDRP cases, the addition of a generic term to a trademark does not necessarily distinguish the trademark from the Domain Name.
The generic word may rather add to the confusing similarity (see Scholastic Inc. v. 366 Publications, WIPO Case No. D2000-1627 holding that "[t]he addition of the generic term "online"…is not a distinguishing feature. In fact, in this case it increases the likelihood of confusion because it is an apt term for Complainant's online business".
The disputed Domain Names incorporates the well-known and distinctive trademark COINTREAU in its entirety and the mere addition of the terms "biter", "drogues" and "pyroxene" does not distinguish the disputed Domain Names from the Complainant's COINTREAU trademark.
The Panel finds that the condition of the paragraph 4(a)(i) of the Policy has been satisfied.
b) Right or legitimate interests

The Respondent did not submit a Response in this proceeding and has not provided any evidence or circumstances required to establish that it has rights or legitimate interests in the Domain Names, according to paragraph 4(c) of the Policy.
The Respondent passively holds the Domain Names. This does not constitute a bona fide use for the purposes of the UDRP.
The Respondent is obviously not commonly known by the Domain Names and he is not making legitimate non-commercial or fair use of them. There appears to be no other basis on which the Respondent could claim any rights or legitimate interests.

The Complainant has, to the satisfaction of the Panel, shown the Respondent has no rights or legitimate interests in respect of the Domain Names, within the meaning of paragraph 4 (a) (ii) of the Policy.

c) Registered and used in bad faith
The COINTREAU trademark is widely known and the Panel concludes that Respondent must have been aware of the Complainants' rights in the trademark when it registered the Domain Names.
Respondent's Domain Names are not used, since they only resolve to a page mentioning "403 – Forbidden/ Access denied".
It is practically impossible that Respondent would be able to use the Domain Names without coming into conflict with Complainants' rights in its well-known COINTREAU trademark (see also Inter-IKEA Systems B.V v. Avi Chekroun, WIPO D2000-0478). The fact that Respondent did not either respond or react to the cease and desist letters or file any response to the Complaint is a further element showing Respondent's bad faith behavior.
Finally, regarding the fact that Respondent does not actively use the Domain Names, the Panel refers to the Telstra Case (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO D2000-0003) pursuant to which also a passive holding of a domain name may amount to evidence of bad faith use, in particular in connection with the elements which have been set out above.
For the foregoing reasons, the Panel finds that the Complainant has also established the finding of bad faith registration and use within the meaning of paragraph 4(a)(iii) of the Policy.

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names <bitercointreau.info>, <cointreaudrogues.info> and <cointreaupyroxene.info> be 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. **BITERCOINTREAU.INFO**: Transferred
2. **COINTREAUDROGUES.INFO**: Transferred
3. **COINTREAUPYROXENE.INFO**: Transferred

PANELLISTS

Name	**Marie Emmanuelle Haas**

DATE OF PANEL DECISION 2014-01-03

Publish the Decision