Decision for dispute CAC-UDRP-100861

Case number	CAC-UDRP-100861
Time of filing	2014-10-09 13:26:29
Domain names	rue-ducommerce.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Mr PHILIPPE MALEQUIN

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the disputed domain name

IDENTIFICATION OF RIGHTS

The complainant has registered the following trademarks in France:

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

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

• “RDC.fr Rue du Commerce”, registered on 28 July 1999 under number 99805150, for goods and services class 35, 38, 42.

The complainant has registered the following CTMs:

• « RUE DU COMMERCE.COM », registered on 14 May 2009 under number 8299381 for goods and services class 16, 35, 36, 37, 38, 41, 42
• « RUE DU COMMERCE », registered on 14 May 2009 under number 8299356 for goods and services class 16, 35, 36, 37, 38,

41, 42
• « RUE DU COMMERCE », registered on 25 July 2013 under number 12014833 for goods and services class 9, 16, 35, 36, 37, 38, 41, 42.

FACTUAL BACKGROUND

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

The Complainant claims that RueDuCommerce Company has been registered on 27 April 1999 under the number B 422 797 720 R.C.S. BOBIGNY. Its head office is situated 44 Avenue du Capitaine Glarner, 93400 ST OUEN – FRANCE.

Furthermore, the Complainant states that RueDuCommerce is the owner of a portfolio of Trademarks for the course of its internet-order selling business activities on web sites accessible in particular at the addresses www.rueducommerce.com and www.rueducommerce.fr.

During more than eleven years RueDuCommerce has gained an important notoriety among the French net surfers and consumers. It is now a major e-merchant in France whose honorability and reliability are well known from the Internet users.

The disputed domain name was registered on 2 August 2014.

PARTIES'S CONTENTIONS

The Complainant claims that the disputed domain name is confisingly similar do trademarks in which it has rights for the disputed domain name fully incorporates the "rueducommerce" trademark, with only the addition of the sign "-" between the terms "rue" and "ducommerce".

Furthermore, according to the Complainant the copying of the domain name almost identically with the single addition of a neutral sign is undeniably a way to attract customers and take advantage of the notoriety of RueDuCommerce.

There is no doubt that Internet users seeing the domain name may believe that it is somehow related to or authorized by RueDuCommerce Company.

Moreover, the Complainant contends that the Respondent is registered under the name of "Philippe MALEQUIN at Avenue du Capitaine Glarner – 93585 SAINT-OUEN". These information are very similar to the real ones.

Indeed, the RueDuCommerce's CEO is "Albert MALAQUIN" and the company is located at "44 AVENUE DU CAPITAINE GLARNER - 93400 Saint-Ouen".

The Complainant concludes that this choice demonstrates the bad faith of the registrant. It is significant that this element increasing the likelihood of confusion.

The Complainant claims that it has not licensed or otherwise permitted the Respondent to use his brand or to apply for or use any domain name incorporating it and 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 Complainant contends it has tried to reach the owner of the disputed domain name. On 5 August 2014 a recorded delivery mail was sent to the Respondent. Simultaneously, an email to the Respondent's email was sent. In the same time, a recorded deliver mail and email was sent to the Registrar. On August 6th, 2014 the Complainant has addressed a recorded delivery mail to Philippe MALEQUIN – Avenue du Capitaine Glarner – 93585 SAINT OUEN.

Obviously, this recorded delivery mail came back to the Complainant with the mention "wrong address".

Moreover, the Complainant claims that the disputed domain name is not used for any active web site. In fact, the website

refers to an error message “the requested URL was not found on this sever”. Therefore, the litigious domain name has no real activity.

Furthermore, the Respondent has not demonstrated, as the Policy requires, that he made preparations to use the disputed domain name in connection with a bona fide offering goods or services.

The Complainant concludes, that the disputed domain name www.rue-ducommerce.com has been registered by the Respondent, without rights and legitimate interest.

As for registering and being used in bad faith, the Complainant states, that nothing on the website suggests that the Respondent is making a legitimate commercial or non-commercial business activity with the domain name because it has never been used and it is not currently being used.

Besides, the Respondent has registered the disputed domain name on 2 August 2014 posteriorly at the registration of the trademarks by the Complainant. The Respondent was therefore able, at the time of the registration, to know the Complainant’s trademark and the infringement to intellectual property rights he was committing by registering this domain name.

Then, the choice of a name and an address very close to the real ones demonstrates the bad faith of the registrant.

The Complainant claims, that the main purpose of the registration of the disputed domain name has been to prevent the Complainant, legitimate owner of “Rueducommerce” trademark, from reflecting the brand in a corresponding domain name while it is not exploited.

According to the Complainant, the non-use of the disputed domain name is perceived as an act of “passive holding” which prevents it from registering the domain name under his rightfully owned trademark. This passive holding prevents the trademarks owner from using the rights conferred by his marks.

As the registrant of www.rue-ducommerce.com has no legal right to use the Complainant’s trademark, there is clearly bad faith in maintaining the domain name to the benefit of the Respondent.

Therefore, the fact that the Respondent does not use the domain name shows his intention to prevent third parties from reflecting their trademarks in corresponding domain names.

Finally, the Complainant concludes that the Respondent is acting in bad faith.

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

The disputed domain name is confusingly similar to the Complainant's registered trademarks since it incorporates the Complainant's mark 'RUEDUCOMMERCE', merely adding the generic top level domain identifier '.COM' at the end. Furthermore, the Panel finds the disputed domain name to be confusingly similar to the Complainant's trademarks, based on a visual and aural comparison of the disputed domain name and the trademarks.

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>"

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent's registration of the Disputed Domain Name to intentionally attract Internet users for commercial gain is a clear evidence of bad faith registration and use of the domain name within the meaning of Paragraph 4(b)(iv) of the Policy. Indeed the disputed domain name creates a likelihood of confusion between the domain name and Complainant's mark, trying to obtain an unfair advantage of the reputation and good will associated with the Complainant and its trademarks. This practice can clearly be found to constitute evidence of bad faith registration and use under the Paragraph 4(a)(iii) of the Policy.

Furthermore, passive holding of domain names reproducing well-known trademarks has also been considered as use in bad faith in many decisions.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RUE-DUCOMMERCE.COM**: Transferred

PANELLISTS

Name	**Mr. Luis H. de Larramendi**

DATE OF PANEL DECISION 2014-11-12

Publish the Decision