Decision for dispute CAC-UDRP-100902

Case number	CAC-UDRP-100902
Time of filing	2015-01-14 10:56:08
Domain names	top-achat.net

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Organization	JON

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant asserts, and provides evidence in support thereof, that it is the owner of a number of trademark registrations that consist of "TOP ACHAT," including French Reg. No. 3,289,599 (registered May 4, 2004); and CTM Reg. Nos. 4,034,211 (registered September 8, 2004) and 2,827,976 (registered September 19, 2002).

FACTUAL BACKGROUND

The RueDuCommerce Company has been registered on April 27, 1999 under the number B 422 797 720 R.C.S. BOBIGNY. Its head office is situated 44-50 Avenue du Capitaine Glarner – 93400 ST OUEN, FRANCE.

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 following address: www.topachat.com.

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

Complainant claims the disputed domain name is confusingly similar to trademark in which Complainant has rights.

According to Complainant,

this similarity is illustrated, in particular, on three levels:

1) Visually, the litigious domain name contains the same joined words as Complainant's trademarks, with only addition of the sign "-" between "top" and "achat". Moreover, the litigious domain name uses the extension ".net" instead of ".com" but the visual effect created by such difference is not substantial.

2) Conceptually, the recovery is almost identical and the spirit of the text is unaffected by the presence of the dash between "top" and "achat" and the extension ".net". Indeed, the disputed domain names each contain dominant and distinctive parts that form the trademark of topachat.com.

3) Phonetically, the sound of the name "top-achat.net" is equivalent to that of "topachat.com". Indeed, the sign "-" used between "top" and "achat" is a silent letter.

No doubt that this similarity between the disputed domain names and trademarks of the company RueDuCommerce is likely to create confusion in the public mind.

Given the number of similarities, users are legitimately entitled to believe that the website www.top-achat.net belongs to RueDuCommerce company or, at least, that they are economically linked.

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

Furthermore, Complainant alleges the disputed domain name has been registered by Respondent without rights or legitimate interest in the name.

Internet inquiries as well as trademark database searches have not revealed any use or registrations by Respondent that could be considered relevant. Moreover, the non-use of the domain name is perceived as an act of "passive holding", which prevents the Complainant from registering the domain name under his rightfully owned trademarks.

On October 15, 2014, recorded delivery mail and email were addressed to Respondent.

This letter is still left unanswered.

Complainant states, that the disputed domain name is not used for any active web site.

Moreover according to Complainant, 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.

Finally, Complainant claims the domain name is registered and being used in bad faith.

Actually, the main purpose of the registration of the disputed domain name has been to prevent Complainant, legitimate owner of "topachat.com" trademark, from reflecting the brand in a corresponding domain name.

Furthermore, the non-use of the disputed domain name is perceived as an act of "passive holding" which prevents Complainant 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 top-achat.net has no legal right to use Complainant's trademark, there is clearly bad faith in maintaining the domain name to the benefit of Respondent.

Then, the litigious domain name does not resolve to web site or other on-line presence. There is no evidence that a web site or other on-line presence is in the process of being established which will use the domain name.

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

Moreover, the disputed domain name has been registered under a false address. Indeed, the whois database indicates that the registrant city is France and that the registrant country is Faroe Islands.

Finally, the silence of the Registrant who has been contacted by mail and email prevents Complainant to seek damages against him.

According to all circumstances of this situation, Respondent is acting in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

In light of the trademark registrations cited by Complainant, and the fact that the disputed domain name is identical thereto other than the meaningless substitution of a dash in lieu of a space, 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

Under the Policy, "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, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP." WIPO Overview 2.0, paragraph 2.1.

Accordingly, as a result of Complainant’s allegations and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has proven the second element of the Policy.

BAD FAITH

This Panel agrees that bad faith exists under the doctrine of passive holding set forth in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. 2000-0003, given the strength of the TOP ACHAT trademark in light of what Complainant has described (without contradiction by Respondent) as "an important fame among the French net surfers and consumers," that the mark represents "a major e-merchant in France whose integrity and reliability are known from the Internet users," as well as the lack of evidence of any actual or contemplated good faith use.

Accordingly, 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 principal reasons for this decision are as set forth above.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TOP-ACHAT.NET**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2015-02-23

Publish the Decision