Decision for dispute CAC-UDRP-101030

Case number	CAC-UDRP-101030
Time of filing	2015-08-17 10:27:55
Domain names	rueducommerces.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Marc RICHARD

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

This UDRP is based at least on the following Complainant's trademarks:

- RUE DU COMMERCE, French trademark registration No. 3036950, of 27 June 2000, for goods and services in classes 9, 16, 28, 35, 38, 41 and 42;

- RUE DU COMMERCE, International registration No. 754897, designating Benelux, Switzerland, Morocco, Monaco and Algeria, for goods and services in classes 9, 16, 28, 35, 38, 41 and 42;

- RUE DU COMMERCE, CTM registration No. 8299356, filed on 14 May 2009 and granted on 23 February 2011, for goods and services in classes 16, 35, 36, 37, 38, 41 and 42;

- RUE DU COMMERCE, CTM registration No. 12014833, granted on 25 July 2013, for goods and services class 9, 16, 35, 36, 37, 38, 41, 42.

The Complainant has also based its Complaint on other trademarks, but since no evidence has been enclosed attesting to

the ownership of these trademarks, same will not be taken into consideration for the purpose of this Complaint.

FACTUAL BACKGROUND

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

1. Background Information

The Complainant in this administrative proceeding is the French company RueDuCommerce, with registered office in 44-50 avenue du Capitaine Glarner - 93400 Saint Ouen, France. The Complainant has been established on April 27th, 1999. The Complainant operates in the field of on-line sales of different types of goods, mainly through its Internet addresses at www.rueducommerce.com and www.rueducommerce.fr.

During more than eleven years, the Complainant has gained an important notoriety among French net surfers and consumers. It is now a major e-merchant in France that Internet users consider reliable and honorable.

The disputed domain name was created on 6 March 2015, and the identity of its owner was originally concealed through a privacy protection service, offered by Whois Privacy Protection Service, Inc.

On 12 March 2015, the Complainant's attorneys addressed a cease and desist letter to the Registrar of the disputed domain name and the Registrar disclosed the full and complete identity of the Domain Name's holder.

On 16 March 2015, the Complainant's attorneys addressed another cease and desist letter to the owner of the Domain Name. The letter was send both by registered mail and by e-mail. The letter sent through registered mail was returned to the sender with the indication "wrong address". The letter sent by e-mail was left unanswered. The Complainant made a third attempt to contact the owner of the Domain Name on 25 June 2015, but the result was the same as for the letter sent on 16 March 2015.

At the time of the filing of the Complaint for this UDRP proceedings, the disputed domain name did not resolve to an active website.

As far as the Complainant's contentions are concerned, the Complainant claims:

2. The disputed domain name is confusingly similar to trademark in which the Complainant have rights

The disputed domain name is confusingly similar to the earlier Complainant's trademark from the visual, phonetic and conceptual points of view. The mere addition of the last letter "s" to the RUEDUCOMMERCE trademark is insufficient to distinguish the disputed domain name from the Complainant's earlier trademark, The Domain Name is likely to attract customers and to take advantage from the notoriety of the Complainant's trademark. Internet users when faced with the <rueducommerces.com> domain name will consider that it is somehow related to, or authorized by, the Complainant.

3. The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name

The main reasons adduced by the Complainant to support the Respondent's lack of rights or legitimate interests in the Domain Name, are the following.

First, the Complainant did not license or otherwise permit the Respondent to use its trademark or to apply for, or use, any domain name incorporating it.

Second, Internet inquiries as well as trademark database searches did not reveal any use or registrations by the Respondent that could be considered relevant to demonstrate use or legitimate interests in the disputed domain name.

Third, the Complainant tried to reach the owner of the disputed domain name several times, but without success. The mail

address indicated at the time of the registration of the Domain Name was wrong, and the Respondent failed to reply to all communications sent to his e-mail address, as appearing in the relevant Whois.

Fourth, the disputed domain name is not used for any active web site. In fact, the website resolves to an error message “the requested URL was not found on this sever. That’s all we know”. Therefore, the litigious domain name has no real activity.

Fifth, the Respondent did not demonstrate, that he made preparations to use the disputed domain name in connection with a bona fide offering goods or services.

4. The domain name is registered and being used in bad faith

The Complainant states the following.

As far as registration in bad faith is concerned:

First, 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 registered the disputed domain name after the registration of the Complainant’s trademarks. At the time of the registration of the disputed domain name, the Respondent was therefore able to know the Complainant’s trademark and the infringement he was committing by registering the Domain Name. The choice of a name and an address very close to the real ones demonstrates the Respondent’s bad faith.

UDRP rules provide several ways of establishing bad faith. One is where the domain name is inactive and is not being used.

As far as use in bad faith is concerned:

The main purpose of the registration of the disputed domain name has been to prevent the Complainant from reflecting its trademark in a corresponding domain name, which is not exploited. Under paragraph 4b(ii) of the Policy, the registration of a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, is a registration in bad faith, provided the domain name owner has engaged in a pattern of such conduct. In the instant case, the “passive holding” of the Domain Name prevents the Complainant from registering the Domain Name under his rightfully owned trademark, and from using the rights conferred by its trademark.

Finally, it should be noted that the disputed domain name was registered on 6 March 2015.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLAINT 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

I. The Domain Name is 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).

The Complainant has successfully demonstrated to be the owner of French and Community trademarks consisting of the terms RUE DU COMMERCE for several classes of goods and services. All these trademarks date back before the date of registration of the disputed domain name. The disputed domain name is identical to the Complainant's earlier trademarks but for the last letter "s" placed at the end of the word "commerce". This difference is so minimal that it is likely to go unnoticed. The addition of the suffix ".com" is irrelevant when assessing the confusing similarity of the disputed domain name, because it is a compulsory element of the Domain Name and as such is deprived of distinctive character.

Accordingly, the Panel concludes that <rueducommerces.com> is confusingly similar to the Complainant's trademark.

II. The Respondent lack of rights or legitimate interests in the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

According to the WIPO Overview 2.0. "[W]hile the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore 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 (...).".

The Complainant has indicated that it never licensed, nor otherwise permitted the Respondent to use its RUE DU COMMERCE trademark, or to apply for, or use, any domain name incorporating it. Moreover, according to the Complainant, there is no evidence that the Respondent owns IP rights on the name RUE DU COMMERCES, or that it is known by this name.

Furthermore, the disputed domain name does not resolve to an active website, and the Respondent did not reply to any of the cease and desist letters he should have received, at least via e-mail, addressed to him by the Complainant before starting this UDRP proceeding. The Respondent had the opportunity to rebut the Complainant’s arguments and to provide evidence attesting to its rights or legitimate interests in the Domain Name, but it chose not to file a Response. Hence, the Panel finds that the Complainant’s assumptions are sufficient to demonstrate that the Respondent lacks rights or legitimate interests in the Domain Name.

III. The Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

As far as registration in bad faith is concerned, the Panel notes that the Respondent registered a domain name, which bears no connection with the Respondent. More specifically, the Domain Name, is formed by an address (Rue du Commerces), that does not coincide with the Respondent's address. Nor are there other elements that enable to establish a link between the Domain Name and the Respondent; in particular, the Domain Name does not lead to an active website.

Furthermore, the Domain Name coincides - except for the last letter "s" - with the Complainant's company name and trademark. The Complainant maintains that it enjoys reputation in France in the e-commerce field, and that its website address is at www.rueducommerce.com. The Panel has noted that the Respondent is a French individual. As both Parties are located in the same territory, which is also where the Complainant performs its activity and enjoys reputation, in the

absence of any indications to the contrary, the Panel concludes that the Respondent was well aware of the Complainant's trademark, website, and reputation at the time he registered the disputed domain name.

This is also indirectly confirmed by the fact that the name “Rue du Commerces” is clearly a misspell, because the correct way to write this address would be “Rue du Commerce” or “Rue des Commerces”. Since the Respondent is a French individual, he should be well aware of the grammatical rules of the French language. The grammatical mistake contained in the disputed domain name arises the strong suspicion that the selection of this name was only made to take an illegitimate advantage from the distinctive character and the reputation, at least in France, of the disputed trademark.

As far as use in bad faith is concerned, the Panel notes that the disputed domain name does not lead to an active website. Previous Panelists have found that in certain circumstances, passive holding of a domain name amounts to use in bad faith of this domain name.

In the case at issue, the Complainant made several attempts to contact the Respondent, but all these attempts proved unsuccessful: the Respondent provided false mail contact details at the time the Domain Name was registered (or did not update his contact details), and the Respondent never replied to the Complainant's letters sent via e-mail. By providing false contact details, deliberately avoiding to reply to the Complainant's requests, and maintaining the ownership of a domain name confusingly similar to a third party's well-known trademark without the Complainant's authorization, the Respondent has engaged in a pattern of bad faith. The reasons behind the Respondent's passive holding of the Domain Name could be multiple, and the Panel is unable to determine them with sufficient accuracy. Nevertheless it is clear from the Respondent's attitude, that the Respondent's passive holding of the disputed domain name is not in good faith.

For all reasons mentioned above, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RUEDUCOMMERCES.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2015-09-24

Publish the Decision