Decision for dispute CAC-UDRP-101532

Case number	CAC-UDRP-101532
Time of filing	2017-05-10 14:36:55
Domain names	wwwtopachat.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	RueDuCommerce

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Ke Yang

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks incorporating TOP ACHAT, of which the following are representative for the purposes of the present proceeding:

TOP ACHAT, France trademark, registered May 4, 2004, registration number 3289599, classes 10, 20 and 21;
TOP ACHAT, France trademark, registered July 6, 2011, registration number 10103067, classes 9, 35, 36, 38, 41 and 42;
TOP ACHAT, CTM trademark, registered August 9, 2004, registration number 4034211, classes 11, 20 and 21;
TOP ACHAT, CTM trademark, registered September 19, 2002, registration number 2827976, classes 9, 35, 36, 38, 41, 42 and 43;
TOP ACHAT, International Trademark, registered October 8, 2002, registration number 841118, classes 11, 2 and 21.

FACTUAL BACKGROUND

The Complainant, The RueDuCommerce Company, is a French based company and in the last eleven years the Complainant has gained an important fame among the French net surfers and consumers and it is now a major e-merchant in France.

The Complainant 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

The Complainant owns several trademarks including the distinctive wording TOP ACHAT.

The Complainant operates its business via the domain name <topachat.com>, registered since 1999, and gets more than 8 million visits per month.

The disputed domain name <wwwtopachat.com> was registered by the Respondent on 8 February, 2017.

At the time of this decision, the disputed domain name displays sponsored links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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. Rights (paragraph 4(a)(i)of the Policy)

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the owner of numerous trademark registrations for the marks TOP ACHAT. For example, France trademark registration number 3289599, registered May 4, 2004, in classes 10, 20 and 21; France trademark registration number 10103067, registered July 6, 2011, in classes 9, 35, 36, 38, 41 and 42; CTM trademark registration number 4034211, registered August 9, 2004, in classes 11, 20 and 21; CTM trademark registration number 2827976, registered September 19, 2002, in classes 9, 35, 36, 38, 41, 42 and 43; International Trademark registration number 841118, registered October 8, 2002, classes 11, 2 and 21.

The disputed domain name reproduce the Complainant’s registered trademarks in its entirety with the addition of the term "www" at the beginning of the domain name and the generic Top-Level Domain (“gTLD”) “.com”.

In the present case, the addition of the terms "www" used does not serve sufficiently to distinguish or differentiate the

disputed domain name from the Complainant's TOP ACHAT trademarks. It is clear that the most prominent element in the disputed domain name is the term "TOP ACHAT".

The addition of the gTLD suffix ".com" does not have the capacity to distinguish the disputed domain name from the Complainant's registered trademark and are disregarded when comparing the disputed domain name with the Complaintan's trademarks.

Accordingly, the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

2. Absence of Rights or Legitimate Interests (paragraph 4(a)(ii) of the Policy).

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name.

The Complainant has stated that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also stated that it has not licensed nor allowed the Respondent to use the disputed domain name.

In the present case, the Complainant has demonstrated to the Panel that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent had failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use the TOP ACHAT trademark, or a variation thereof.

The Respondent had not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is sufficient to rebut the Complainant's prima facie case.

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

The Panel finds for the Complainant under paragraph 4(a)(ii) of the Policy.

3. Bad Faith (paragraph 4(a)(iii) of the Policy)

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith [Policy, paragraph 4(a)(iii)]. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned a registration for the TOP ACHAT trademark since at least the year 2002. It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain name.

Paragraph 4(b)(iv) of the Policy provides that it will be evidence of bad faith registration and use by the Respondent, if by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or online location to which the disputed domain name resolves, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location to which the disputed domain name resolves.

The disputed domain name is identical to the Complainant's trademark.

Previous UDRP panels have found that “[a] likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant’s site to the Respondent’s site.” To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

Having regard to the evidence, the Panel finds that the disputed domain name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith. The Respondent’s actions therefore constitute bad faith registration and use of the disputed domain name. Further, the disputed domain name is currently directing to a pay-per-click website, offering advertisement in the same business field as the Complainant, which in this case circumstances, indicate the Respondent’s bad faith.

Based on the evidence that was presented to the Panel, including the Complainant’s registered trademarks, the use of the Complainant’s trademarks in the disputed domain name, the current use of the disputed domain names and the Respondent’s failure to answer the Complaint, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. WWWTOPACHAT.COM: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2017-06-26

Publish the Decision