Decision for dispute CAC-UDRP-101832

Case number	CAC-UDRP-101832
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Domain names	Showroomprivé.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	SHOWROOMPRIVE.COM SARL

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Chargepal S.L.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings between the parties to this dispute or relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks including the wording SHOWROOMPRIVE® and SHOWROOMPRIVE.COM®, such as the following trademarks:

- French trademark SHOWROOMPRIVE number 3494511 registered on April 13, 2007;
- French trademark SHOWROOMPRIVE.COM number 3484175 registered on February 26, 2007; and
- European trademark SHOWROOMPRIVE.COM number 5761374 registered on January 23, 2008.

FACTUAL BACKGROUND

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

Created in 2006, SHOWROOMPRIVE.COM SARL (the Complainant) is an online sales events club that is specialized in online brand destocking.

Through its main website <showroomprive.com> the Complainant sells different products such as ready-to-wear for men,

women and children, fashion accessories (scarves, lingerie, and tights), cosmetics, underwear and household equipment, toys or decoration. The products enjoy large reductions (-50% to -70%) compared to prices in the stores.

The Complainant also owns numerous domain names including the same wording, such as the followings:

- <showroomprive.com> registered on April 27, 2006;
- <showroomprive.fr> registered on April 27, 2006.

The Disputed Domain Name <showroomprivé.com>, or <xn--showroompriv-meb.com> was registered on January 22, 2012 by the Respondent identified as the Organization Chargepal S.L..

The Complainant contends that the Disputed Domain Name is identical to its previous trademarks SHOWROOMPRIVE® and SHOWROOMPRIVE.COM®.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the Disputed Domain Name <showroomprivé.com> is identical to its prior trademarks SHOWROOMPRIVE® and SHOWROOMPRIVE.COM®. Indeed, the Complainant's trademarks are reproduced in the disputed domain name in their entirety.

The only slight variation is the last letter "e" which is written in the Disputed Domain Name with an acute accent: "é". It matches the French orthography and pronunciation of the Complainant's trademark. Prior Panels have held that the use of an accent does not distinguish a domain name from a previous trademark.

Furthermore, the Disputed Domain Name is registered with the gTLD ".COM", the same extension of the official domain name of the Complainant : <showroomprive.com>. The term COM is also used in the trademarks of the Complainant, and therefore the Disputed Domain Name is associated to them.

Thus, the choice of the extension increases the likelihood of confusion between the Disputed Domain Name and the Complainant.

Finally, a Google search on the term "showroomprive.com" displays information regarding the Complainant.
On those facts, the Complainant contends that the Disputed Domain Name <showroomprivé.com> is identical to its prior trademark.

The 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 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 Complainant states that the Respondent has no right on the term SHOWROOMPRIVE®. Indeed, the Respondent has no trademark nor commercial name in relation with the Disputed Domain Name.

Furthermore, the website in relation with the Disputed Domain Name <showroomprivé.com> displays sponsored links in relation with the Complainant's activity ("mens clothing", "women clothing", "Blazers and Jackets", etc).

The website associated to the Disputed Domain Name also displays a link offering to sell the Disputed Domain Name on the

SEDO’s platform at the price of USD 1,888.

Thus, the Complainant asserts that the Respondent has only registered the Disputed Domain Name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark.

Accordingly, the Respondent has no rights or legitimate interests in the Disputed Domain Name <showroomprivé.com>.

The Disputed Domain Name <showroomprivé.com> is identical to the Complainant’s trademarks SHOWROOMPRIVE® and SHOWROOMPRIVE.COM®.

Given the distinctiveness of the Complainant’s trademarks and reputation, the Complainant states that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant’s trademarks and uses it for the purpose of misleading and diverting Internet traffic.

Indeed, the Complainant states that the association of the trademarks with an acute accent on the term “PRIVE” cannot be a coincidence, especially knowing that the Complainant is a French Company, a country in which is used an acute accent on the letters “e”.

A Google search on the term SHOWROOMPRIVE.COM provides several results, all of them being linked with the Complainant and its activity.

The Complainant states that the association of the trademarks with an acute accent on the term “PRIVE” cannot be a coincidence, especially knowing that the Complainant is a French Company, a country in which is used an acute accent on the certain letters “e”.

Furthermore, the Respondent is using the Disputed Domain Name in connection with a website which points to a webpage displaying sponsored links related to the Complainant’s activity. The Complainant contends that this use is only made to attract internet traffic.

Secondly, the website is displaying a link offering for sale the Disputed Domain Name on the SEDO’s platform at the price of USD 1888. The sale of the Disputed Domain Name for profit to the Complainant, or a competitor of the Complainant, was the Respondent’s primary purpose in its registration, constituting registration in bad faith. The Disputed Domain Name, by being placed for sale with a notice to that effect on its website, has been used for the same purpose of being offered for sale, constituting use in bad faith.

Therefore, these circumstances indicates that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling it to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name.

By registering and using the Disputed Domain Name, it seems clear that the Respondent has maintained the Disputed Domain Name in order to intentionally attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark.

Thus, the Disputed Domain Name was registered and used only for sale, because of its value that is in some way dependent on the Complainant’s trademark.

On these bases, the Complainant concludes that the Respondent has registered and is using the Disputed Domain Name <showroomprivé.com> in bad faith.

RESPONDENT: 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

According to paragraph 4(a) of the Policy, the Complainant must prove the following in order to succeed in relation to the Disputed Domain Name:
(i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(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 the Respondent did not submit a Response, the Panel may treat as uncontested the Complainant's factual assertions. The Panel will now turn to review each of these above-mentioned elements.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the SHOWROOMPRIVE trademark. Turning onto the confusing similarity analysis, the Panel finds that the Complainant has established confusing similarity, as the Disputed Domain Name is nearly identical to the trademark, with the exception of one character. The only difference between the trademark and the Disputed Domain Name lies in that the Disputed Domain Name utilizes a special character, specifically "é", which is meant to substitute the letter "e" contained in the SHOWROOMPRIVE trademark. This difference is insignificant for purposes of assessing the first element of the Policy.

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant contends that it has not authorized the Respondent to use its SHOWROOMPRIVE trademark, that the Respondent is not affiliated to the Complainant in any way, and that the Respondent is not commonly known by the Disputed Domain Name. Furthermore, the Complainant produced evidence showing that the website that resolves from accessing the Disputed Domain Name contained sponsored links competitors of the Complainant, which, according to the Complainant, would indicate that the Respondent's intention behind the use of the Disputed Domain Name is to take advantage of an association with the Complainant's business in order to derive an economic benefit.

With these contentions and evidence on record, the Panel believes the Complainant has established a prima facie case that

the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

As there is no available evidence on record that would allow the Panel to find rights or legitimate interests in favor of the Respondent in the Disputed Domain Name (see section 2.1 of WIPO 3.0 Overview), the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that as per the evidence on record, the Respondent was more than likely aware of the Complainant and had the Complainant's trademarks in mind when registering the Disputed Domain Name. The Respondent registered the Disputed Domain Name incorporating the entirety of the trademark, with a slight change, for a commercial gain benefiting from the likelihood of confusion. This leads the Panel to conclude that the registration and use of the Disputed Domain Name has been done in bad faith, as the conduct of the Respondent is reflected in what is epitomized under the indicative list of conducts described under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the final element required under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforestated reasons and in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transferal of the Disputed Domain Name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SHOWROOMPRIVé.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2018-02-09

Publish the Decision