Decision for dispute CAC-UDRP-101863

Case number	CAC-UDRP-101863
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Domain names	24sevre.com

Case administrator

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

Complainant

Organization	24 Sèvres

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Lei CHEN

OTHER LEGAL PROCEEDINGS

The Complainant has not made any statement regarding other legal proceedings. The Panel is not aware of any such proceedings and proceeds on that basis.

IDENTIFICATION OF RIGHTS

The Complainant's relevant rights are in the trade mark '24 Sèvres', as registered through the Madrid system (1322116, applied for on 20 June 2016, on the basis of a French trade mark 4235955, of 2015, not otherwise referred to, the proprietorship of which is unclear), and in France (4355324, applied for on 18 April 2017, granted on 29 September 2017). Reference is also made to an EU trade mark 17190547. However, the Complaint only refers to the application for rather than the registration of the EUTM; in fact, as the Panel has confirmed by consulting the EUTM database, the EU trade mark was not granted until 23 January 2018. As such, the weight it will be given in the present proceedings will vary as between the aspects of the UDRP.

The Complainant also makes reference to earlier LVMH marks obtained by a related company Le Bon Marché (like the Complainant, a subsidiary of the larger enterprise LVMH). This information is not fully presented (for instance, reference is made to an Annex, but the said Annex does not contain any information concerning the marks), and may also have been affected by an error (reference is made to EUTM 12022595, but this is not a valid registration number; the Panel has assumed, through its own use of the EUTM database, that it was intended that this be a reference to EUTM 12022596, which is indeed the mark 24 Sèvres in a small number of classes).

FACTUAL BACKGROUND

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The Complainant is a company established in France. It operates an e-commerce website at the domain names <www.24sevres.fr> and <www.24sevres.com>. Its online service, 24 Sèvres, was launched on 6 June 2017, and sells limited collections of more than 150 luxury brands (such as Louis Vuitton, Christian Dior, Chloé and Valentino, which are sold and shipped to more than 75 countries.The Complainant is owned by the larger company LVMH (Moët Hennessy Louis Vuitton).

The Respondent is an individual with an address in Guangdong, China. The Respondent registered the disputed domain name on 5 May 2017.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The Respondent never accessed the online platform.

The Complainant contends that all three elements of paragraph 4(a) of the Policy have been satisfied and asks that the disputed domain name be transferred to it.

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).

Bearing in mind that this Complaint is brought in the name of the company 24 Sèvres, the strongest case arises out of the international protection of the mark dating from 2016 (on the basis of the French mark of 2015) and the French mark applied for and granted in April 2017, as set out above.

The disputed domain name is not identical to the relevant marks.

However, the Complainant has demonstrated that the disputed domain name is confusingly similar to the marks in which it has rights. The differences, disregarding the TLD itself as is the usual practice under the UDRP, consist of (a) the replacement of the accented character è with the unaccented character e; (b) the omission of a space between 24 and Sèvres; (c) the use of Sevre instead of Sevres.

Regarding (a), although both characters are possible within the domain name system and indeed for .COM, it is still the case that strings differentiated only by an character containing a diacritical mark can be confusingly similar (see e.g. CAC Case no. 101832 SHOWROOMPRIVE.COM SARL v Chargepal SL; CAC Case no. 101546 Hungary v Csaba Postásy). The Panel notes that it is sometimes said (e.g. WIPO AMC Case D2016-1300 Société des Produits Nestlé S.A. v Sonia de Ferrero) that such differences are 'immaterial', but does not see sufficient justification or reasoning in such cases for this finding to guide the Panel as a general principle. The Panel prefers to treat the matter as one of similarity rather than one where differences are immaterial, absent more precise evidence, given the clear linguistic significance associated with diacritical marks in most languages where Roman characters are used.

Regarding (b), it is noted that it is not presently possible to include a space in a domain name, and so this difference cannot operate in favour of the Respondent (see e.g. WIPO AMC Case D2008-1637 Which? Limited v. Whichcar.com).

Regarding (c), the Complainant argues that the similarities are visual, conceptual, and phonetic. The Panel notes the number of cases within this Provider where the difference under review is a single letter, which are often characterised as 'typosquatting' (e.g. CAC Case no. 100549 E. Remy Martin & Co v Kevin Wall, concerning the domain name REMEYMARTIN.COM and the mark 'REMY MARTIN'). The particular issue of phonetic similarity (which arises in this case because of the similarity between the French-language pronunciation of the words Sevre and Sevres) has been long recognised as relevant under the UDRP; see e.g. WIPO AMC Case D2003-0665 L'TUR Tourismus AG v Juergen Frey; see further, with this Provider, CAC Case no. 100517 E. Remy Martin & Co v Remi Debesse.

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).

The Respondent has not participated in the present proceedings, and so has not provided evidence in support of rights or legitimate interests. The content available at the disputed domain name is no more than an 'under construction' message, which does not disclose any basis on which the Panel could dispute the Complainant's contention that the Respondent has no rights or legitimate interests in the use of the disputed domain name.

The Panel does note the Complainant's admission that it (the Complainant) uses the text '24 Sèvres' in recognition of the postal address of the related department store business, at 24 rue de Sèvres. Of course, there could well be situations where a geographic term would be the basis of a finding of legitimate interests on the part of a Respondent. This is even more so the case where, as in the present situation, the text 'Sèvres' does not just appear in the street name in question, but also as the name of a municipality, a river, and even an international treaty. The balance struck by the UDRP requires a Panel to give careful consideration to situations where there may be confusing similarity under the first test, but lawful concurrent use under the second test. This however is not such a case, and the Complainant has satisfied the requirements under the second test.

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).

The Complainant's submissions are unclear and have caused the Panel some difficulty in the assessment of this third aspect of the UDRP.

The Complainant's key argument appears to be that the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct', as set out in paragraph 4(b)(ii) of the Policy. However, the Complainant has completely failed to provide any evidence of a 'pattern of such conduct'. The Complainant does attempt to rely upon the decision of the WIPO AMC in Case D2010-1118 La Touraine v Above.com Domain Privacy / Transure Enterprise. This is presented as an authority in respect of typosquatting. However, the discussion of typosquatting in the said case is primilarly relevant in respect of the second test (rights or legitimate interests), and the Respondent was also characterised, regarding the third test, as engaged in a pattern of behaviour. Secondly, the Complainant cites another decision of the WIPO AMC, Case D2000-0937 AltaVista v Saeid Yomtobian, as authority for the point that a misspelling alone can be the basis of a finding of bad faith. However, the case in question also makes specific reference, in its discussion of misspellings, to commercial gain.

The Panel therefore expressly rejects the Complainant's submission that the Respondent has 'registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct', on the basis that neither the Complaint nor the Panel's assessment of the case contains evidence of a pattern of such conduct.

The Panel however finds that this case is one of 'passive holding', and so the test for bad faith could be satisfied on this basis. In cases of this type, a Panel cannot realistically identify a situation where use would be in good faith (see WIPO Jurisprudential Overview 3.0, para 3.2 including its summary of the 'Telstra' line of cases (WIPO AMC Case D2000-0003 Telstra Corporation Limited v Nuclear Marshmallows). The Panel notes that mention is made of the Telstra decision in the latter part of the Complainant's submissions and that the Complainant provided a copy of the said decision as an Annex. It is therefore appropriate for the Panel to give full consideration to this line of argument.

On the one hand, one of the factors in the Telstra test is that the Complainant's mark 'has a strong reputation and is widely known'. This is not wholly obvious in the present case, given the 2017 launch of the ecommerce service, which the Panel notes through its own research saw some publicity albeit after the registration of the disputed domain name by the Respondent (e.g. Grace Cook, ‘LVMH opens its first multi-brand internet store’ (Financial Times, 6 June 2017)). Indeed, the

Annex supplied by the Complainant regarding press coverage contains articles that similarly postdate the registration of the disputed domain name or are (unhelpfully) undated. It does appear to be the case that earlier marks were registered and to some extent used, although the evidence provided by the Complainant is far from extensive or clear. The Panel does however note that the Complainant did establish rights in a number of jurisdictions prior to the registration of the disputed domain name, and that the Complainant declares that a website has been operated by a company under the same ownership since 2013. The Panel also notes the provision of an Annex containing various promotional offers (with unclear dates and origins) over a four year period using the text in question. While the Panel would obviously have preferred that this information be set out in a clearer and more thoroughly evidenced fashion by the Complainant, it can accept the Complainant's statements in this regard (which can to some extent be verified by reference to search results and the Internet Archive and the making of reasonable assumptions as to relevant dates).

On the other hand, it is absolutely the case that the Respondent has 'provided no evidence whatsoever of any actual or contemplated good faith use by it' of the disputed domain name. This finding is made on the basis of the lack of participation of the Respondent, but also the Panel's inability to identify any evidence from the web content at the disputed domain name or any other materials available to it.

It is not clear whether the Respondent has attempted to conceal its true identity, or provided false or misleading contact details. The CAC has noted that neither the written notice of the Complaint nor the advice of delivery thereof was returned to it, and so it is unaware whether the written notice was received by the Respondent or not. It is however noted that the Complainant declares that it has not received any response to its two attempts to communicate with the Respondent through the details included in WHOIS records; such failure has been taken into account in other 'Telstra' cases, e.g. WIPO AMC Case D2012-0419 Regeneron Pharmaceuticals, Inc. v. Whois Privacy Protection Service, Inc., in the assessment of bad faith.

Taking all of the above observations into account, the Panel finds, on a Telstra basis rather than on foot of paragraph 4(b)(ii), that the disputed domain name has been registered and is being used in bad faith.

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.

The Panel reminds parties that clear identification of the source and date of evidence provided in annexes is important.

PRINCIPAL REASONS FOR THE DECISION

The reasons are as set out above. The disputed domain name is confusingly similar to the Complainant's relevant trade marks, on account of the small number of differences between the disputed domain name and the marks in questions, which have been considered individually. No rights or legitimate interests on the part of the Respondent have been identified. The Panel considered the various arguments and associated evidence set out by the Complainant regarding bad faith, and ultimately determined that the disputed domain name was registered and is being used in bad faith, due to the 'passive holding' of the disputed domain name by the Respondent, in circumstances where the marks in question were well-known and the Respondent has not engaged with the Complainant or the Court in any fashion.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **24SEVRE.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2018-03-05

Publish the Decision