Decision for dispute CAC-UDRP-101862

Case number	CAC-UDRP-101862
Time of filing	2018-02-12 13:25:53
Domain names	topachatonline.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Organization	tongy

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has registered the following trademarks in France:

• « TOP ACHAT », registered on May 4, 2004 under number 3289599, for goods and services class 10, 20 and 21.

• « TOPACHAT.COM », registered on July 6, 2011 under number 10103067, for goods and services class 9, 35, 36, 38, 41 and 42.

The Complainant has registered the following CTM:

• « TOP ACHAT », registered on August 9, 2004 under number 4034211, for goods and services class 11, 20 and 21.

• « TOP ACHAT », registered on September 19, 2002 under number 2827976, for goods and services class 9, 35, 36, 38, 41, 42 and 43.

The Complainant has registered the following international trademark:

• « TOP ACHAT », registered on October 8, 2004 under number 841118, for goods and services class 11, 20 and 21.

FACTUAL BACKGROUND

RueDuCommerce is the owner of a portfolio of Trademarks for the course of its internet-order selling business activities on websites 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.

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). Visually, the disputed domain name contains the exact same joined words as Complainant's trademarks. The disputed domain name only adds the generic and neutral term "online" but the visual effect created by such difference is not substantial. Conceptually, the recovery is identical. Indeed, the disputed domain name contains dominant and distinctive parts that form the domain name <topachat.com>. Phonetically, it is obvious that both domain names sound very similar despite the insignificant change.

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). First of all, the Complainant has not licensed or otherwise permitted the Respondent to use his brand or to apply for or use any domain name incorporating it.

Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

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

In the present matter, the disputed domain name contains the same joined words as Complainant's trademarks, with an addition at the end of the name of the neutral term "online".

The extension "com" is identical to the registered Complainant's trademarks.

The disputed domain name leads to an inactive website, which is perceived as an act of "passive holding" which prevents the Complainant from registering the disputed 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 the disputed domain name has no legal right to use the Complainant's trademark, there is clearly bad

faith in maintaining the disputed domain name to the benefit of the Respondent.

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

According to all circumstances of this situation, the Panel finds that the Respondent has registered the disputed domain name and is using it 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.

PRINCIPAL REASONS FOR THE DECISION

The Respondent has registered a domain name that is similar to the trademarks registered and used by the Complainant.

The disputed domain name incorporates the “TOPACHAT” trademark. The disputed domain name is infringing Complainant’s intellectual property rights, violating the UDRP rules registering and being used in bad faith. Despite good faith attempts, the Complainant has not managed to find anything that would suggest that the Respondent has rights or legitimate interest in holding the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TOPACHATONLINE.COM**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2018-03-08

Publish the Decision