Decision for dispute CAC-UDRP-101952

Case number	CAC-UDRP-101952
Time of filing	2018-04-06 09:05:39
Domain names	remy-cointreau-fr.com

Case administrator

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

Complainant

Organization	REMY COINTREAU

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Erika Slade

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant uses the domain name <www.remy-cointreau.com> which is connected to the Complainant's official website.

It also owns the trademarks for the name "REMY COINTREAU" (international trademark registration n. 895405 "REMY COINTREAU", in classes 32 , 33 and 43, registered on July 27, 2006).

FACTUAL BACKGROUND

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

The Complainant contends that the disputed domain name differs from the addition of the letter "FR" (refers to the country France) at the end of the domain name, all the terms being separated by a hyphen. As it describes France, where the Complainant has its head office, it is not sufficient to distinguish the disputed domain name from the trademarks REMY COINTREAU®

Please see for instance:

- NAF case No. FA 770909 Hess Corp. v. GR (“Moreover, Respondent’s <hess-uk.com> domain name is confusingly similar to Complainant’s HESS mark because the disputed domain name incorporates the registered mark in its entirety and simply adds a hyphen and the term “uk”).

- FORUM Case No. D2014-2171 Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Oneandone Private Registration, 1&1 Internet Inc. - www.1and1.com / Sharon Ulrich (“The prefix “FR” followed by a hyphen is a descriptive element indicating the country France. The use of this prefix enhances the likelihood of confusion, since the Complainant is a company well-known in France under the name “Leclerc”.)

The Respondent is known as “Erika Slade” from the United States and has not acquiredmark rights on this term. Indeed, past Panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.

Please see for instance:

- FORUM case No. FA 96356, Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has “no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

Furthermore, the disputed domain name points to an inactive website since its registration. Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Please see for instance:

- WIPO case No. D2000-1164, Boeing Co. v. Bressi: the Panel stated that the “Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names”;

The Complainant’s trademarks REMY COINTREAU® is widely known. Given the distinctiveness of the Complainant's trademarks and the Complainant’s reputation all over the world, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.Please see:

- CAC case No. 101900 REMY COINTREAU v. F0rbo (“Besides, in view of the fame of Complainant’s trademark, the Panel finds that there are good reasons to believe that Respondent had actual knowledge of Complainant’s distinctive two part REMY COINTREAU® trademark when it registered the disputed domain name.”)

Therefore, it seems inconceivable that the Respondent can use the disputed domain name without infringing the Complainant’s intellectual property rights, because the disputed domain name is too connected with the Complainant’s trademarks:

- WIPO case No. D2000-0641, Singapore Airlines Limited v. European Travel Network, (<singaporeairlines.org>, <singaporeair.net> and <singaporeair.org>): The panel stated that selection of disputed domain name is so obviously connected to complainant’s well-known trademark, very use by someone with no connection with complainant suggests opportunistic bad faith.

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

I. The disputed domain name is confusingly similar to the Complainant's Trademark

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark. In fact, the disputed domain name only differs from the original domain name by the letters “FR” (referring to France) added at the end of the domain name.

The fact that the Complainant’s head office is located in France is not sufficient to distinguish the disputed domain name from the REMY COINTREAU trademark. As stated by previous Panels: “ the addition of merely generic, descriptive or geographical words to a trademark in a domain name is normally insufficient in itself to avoid a finding of confusing similarity under the first element of the UDRP” (See Accor SA v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj, WIPO Case No. D2017-1225II).

Consequently, the Panel finds that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Panel states that the Respondent has made no use or demonstrable preparations to use of the disputed domain name in connection with a bona fide offering of goods or services. He does not make a legitimate non-commercial or fair use of the disputed domain name and is not commonly known under the disputed domain name.

Moreover, the Respondent is neither affiliated with it nor authorized by it in any way. Neither a licence nor an authorisation has been granted to the Respondent by the Complainant to make any use of the Complainant's trademark or to apply for registration of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Furthermore, the Panel notes that the disputed domain name displays an inactive website since its registration, which demonstrates lack of legitimate interests in respect of the disputed domain name. (See Sanofi v. WHOIS Agent / Whois privacy protection service, Inc. / Jenny Riley, WIPO Case No. D2017-2129 “the disputed domain name website is not used legitimately by Respondent, as the disputed domain name website simply resolves to an inactive page.”)

The Panel finds that the Complainant has made out a prima facie case-a case calling for a response from the Respondent.

In absence of a Response or any other information indicating the contrary from the Respondent the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The disputed domain name was registered and is used in bad faith

As to the registration of the disputed domain name in bad faith, the distinctive character of the Complainant's trademark and its reputation is such that in the Panel's view the Respondent could not ignore the REMY COINTREAU trademark at the time of the registration of the disputed domain name. (See Remy Cointreau v. F0rbo, CAC case no.101900 “Besides, in view of the fame of Complainant’s trademark, the Panel finds that there are good reasons to believe that Respondent had actual knowledge of Complainant’s distinctive two part REMY COINTREAU® trademark when it registered the disputed domain name.”)

Furthermore, currently the disputed domain name is not resolved to an active website. It is established that passive holding does not prevent a finding of bad faith. Previous panels already concluded that passive holding of a domain name could be bad faith when Complainant's mark has a strong reputation and Respondent has provided no evidence of whatsoever of any actual or contemplated good faith use by it of the disputed domain name. (See Intel Corporation v. The Pentium Group, WIPO Case No. D2009-0273 and in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003)

Accordingly, the Panel finds that the Respondent has registered and uses the disputed domain name in bad faith within the meaning of 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. **REMY-COINTREAU-FR.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2018-05-14

Publish the Decision