Decision for dispute CAC-UDRP-102322

Case number	CAC-UDRP-102322
Time of filing	2019-01-30 13:04:48
Domain names	remy-cointraeu.com

Case administrator

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

Complainant

Organization	REMY COINTREAU

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Brookfield Global Integrated Solutions

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings, either pending or decided, relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several RÉMY COINTREAU/REMY COINTREAU trademarks, among which, RÉMY COINTREAU International registration No. 895405 of 27 June 2006, duly renewed and currently designating the European Union, Japan, Singapore, the US, China, Russia and Vietnam, for goods and services in classes 32, 33, and 43. The trademark RÉMY COINTREAU is also used as corporate name.

The Complainant operates various websites worldwide, including <remy-cointreau.com>, registered on 7 October 1996.

FACTUAL BACKGROUND

The Complainant is a French company created in 1990 and is the result of the merger of holding companies of the Hériard Dubreuil and Cointreau families and of successive alliances with other companies operating in the same field of wines and spirits. The Complainant's main activity is the production and sale of cognacs, spirits and liqueurs. The Complainant exports 95% of its products outside France.

The disputed domain name was registered on 23 January 2019.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The disputed domain name is confusingly similar to its well-known trademark REMY COINTREAU. As a matter of fact, the disputed domain name is a clear case of typosquatting, since it contains an obvious misspelling of the Complainant's trademark. In such a case, a domain name is normally considered confusingly similar to the misspelled trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name, as it is not related to the Complainant's business and is not affiliated with the Complainant. The Respondent has not been authorized to register a domain name confusingly similar to the Complainant's trademark.

The disputed domain name points to the Registrar's parking page, which contains commercial links. Therefore, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, and is not making a legitimate non-commercial or fair use of 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).

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.

The Panel notes that on 26 February 2019, the Brookfield Global Integrated Solutions's counsel sent a letter to the CAC, whereby it informed that his client was completely unaware of the registration of the disputed domain name and that the Respondent had unduly used the name of this company for the registration of the disputed domain name. Brookfield Global Integrated Solutions's counsel also affirmed that Mr. Adrian Lo, the individual indicated under the section "Registrant Name" on the relevant Whois information, is not a Brookfield Global Integrated Solutions's employee, and that the Registrant’s telephone number and e-mail address also included in the Whois do not belong to his client.
Apparently, upon receiving the Complaint, Brookfield Global Integrated Solutions asked the Registrar’s fraud department to look into the registration. At the date of its letter to the CAC, Brookfield Global Integrated Solutions had not received a reply from the Registrar; however its counsel noted that "Namescheap.com has updated the Whois information for the subject domain and has removed all references to Brookfield".
In light of the above, Brookfield Global Integrated Solutions's counsel asked for a retroactive extension of the deadline to submit a Response, as it did not want a decision reflecting badly upon his client, "an innocent victim in this apparent fraud".

Always on 26 February 2019, Brookfield Global Integrated Solutions's counsel sent a second communication, whereby it indicated that his client received the Response only on the 20 February as it had no access to the e-mail indicated in the Whois information, to which the Complaint had been electronically sent.

On 4 March 2019 the Panel issued a Nonstandard Communication acknowledging Brookfield Global Integrated Solutions's counsel communications and granting until 7 March, 2019 to provide evidence of some of the statements contained in the letter addressed to the CAC. In particular, the Panel asked for copy of any correspondence between Brookfield Global

Integrated Solutions and the Registrar's fraud department in relation to the registration of the disputed domain name, and for evidence of the removal of any reference to Brookfield Global Integrated Solutions from the relevant Whois information. For reasons of procedural economy, the Panel denied the required extension of the deadline to submit a Response, but informed that she would have taken into due consideration the contents of Brookfield Global Integrated Solutions's letter and of any other possible additional evidence filed in compliance with the Panel's request.

However, Brookfield Global Integrated Solutions, did not file the requested additional evidence within the set deadline, or later on, to support the contents of the letter sent to the CAC on 26 February 2019. The Panel finds it weird that after having spent time and efforts in a long letter to explain why Brookfield Global Integrated Solutions should be considered stranger to the registration of the disputed domain name, it did not supply the requested evidence to the Panel, especially when such tangible evidence existed as Brookfield Global Integrated Solutions' counsel indicated. After checking with the CAC, the Panel understood that Brookfield Global Integrated Solutions' counsel did not receive the CAC's notice that the Panel had issued a Nonstandard Communication requesting for further evidence in support of his statements. This is so because the Respondent had no access to the email address indicated in the CAC's platform and appearing on the relevant Whois information. However, the Panel also understood that the Respondent's email address was changed to the correct one later on, most probably when Brookfield Global Integrated Solutions's counsel finally visited the Platform to check for some developments. Unfortunately, this was done after the deadline set forth by the Panel had expired. At that time, the Brookfield Global Integrated Solutions' counsel mentioned that he was not informed of the issuance of the Panel's Nonstadard Communication and therefore could not reply in time. Moreover, the counsel informed the Panel that he contacted his client in order to obtain the requested evidence but that the person who could have provided such evidence was out of the office for an entire week. In the same communication, Brookfield Global Integrated Solutions's counsel stated that he was attaching the text of the email the IT person sent to him reporting on his interaction with the registrar. This email was not attached to Brookfield Global Integrated Solutions' Nonstandard Communication.

Thus, Brookfield Global Integrated Solutions failed to provide adequate evidence of its non-involvement in the abusive registration of the disputed domain name.

Notwithstanding all the above, the Panel notes that the argument that Brookfield Global Integrated Solutions was not involved in the registration of the disputed domain name is credible, due to the fact that it originates from a longstanding and reliable law firm. Thus, in order not to prejudice Brookfield Global Integrated Solutions' image and reputation, but at the same time considering that no additional evidence was filed despite the Panel's request, the Panel's decides not to take any action to conceal Brookfield Global Integrated Solutions' name in its decision, but to avoid full publication of the decision to the general public.

PRINCIPAL REASONS FOR THE DECISION

1. Rights

The Complainant has shown that it owns registered trademark rights over the terms RÉMY COINTREAU/REMY COINTREAU since 2006. The Panel shares with the Complainant the view that the disputed domain name is a clear case of typosquatting. The mere inversion of the two letters "e" and "a" in the disputed domain name is insufficient to avoid a strong confusing similarity with the Complainant's trademark. This is even more so considering that a non-French speaking individual could easily mistake the correct spelling "eau", typical of the French language, with the incorrect spelling "aeu" of the disputed domain name. Likewise, the hyphen between the terms "remy" and "cointreau" in the disputed domain name does not affect the visual similarities with the Complainant's trademark.

Thus, the Panel is satisfied that the first requirement under the Policy is met.

2. Absence of Rights or Legitimate Interests

While the overall burden of proof under the Policy proceedings rests on the complainant, it is generally recognized that, in order to prove the respondent's lack of rights or legitimate interest in the domain name, it is sufficient for the Complainant to make out a prima facie case to shift the burden of proof to the respondent. This is so because proving a third party's

negative fact, such as the respondent’s lack of rights or legitimate interest, would otherwise result in an almost impossible task for the complainant.

In the instant case, the Complainant maintains that it does not have any business relationship, nor any other kind of relation with the Respondent. Moreover, the Complainant never authorized the Respondent to register a misspelling of its trademark as a domain name. Lastly, the Complainant points out that the use of a disputed domain name confusingly similar to the Complainant's distinctive trademark to access a parking page containing pay-per-click links is not evidence of a bona fide or of a legitimate noncommercial or fair use of the disputed domain name. The Panel has noted that, in order to prove the use of the disputed domain name at the time of the filing of the Complaint, the Complainant attached the wrong document. As a matter of fact, the evidence enclosed refers to the domain name <remy-coinrteau.com> and not to the disputed domain name. Thus, in accordance to the general powers of a panel articulated in Paragraphs 10 and 12 of the UDRP Rules, the Panel has examined on its own motion the contents of the website corresponding to the disputed domain name, and has noted that the disputed domain name does not lead to an active website.

Notwithstanding the discrepancy between the alleged use of the disputed domain name, as described in the Complaint, and the effective use of it, as ascertained by the Panel, the Panel finds that all circumstances mentioned above are sufficient to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the passive holding of the disputed domain name cannot, per se, confer rights or legitimate interests to the Respondent, especially in a case where the disputed domain name is a misspelling of a highly distinctive trademark.

Therefore, the Panel is satisfied that also the second condition under the Policy is met.

3) Registration and use of the disputed domain name in bad faith

The Complainant's trademark is highly distinctive and has been found to be renown by other previous panels. The disputed domain name is a typosquatting of the Complainant’s trademark. It is therefore not conceivable that the Respondent registered the disputed domain name without having in mind the Complainant and its RÉMY COINTREAU trademark. Rather, it is clear that at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant’s trademark and intentionally applied for a misspelling of it.
Numerous UDRP panels have found that typosquatting constitutes bad faith (see, amongst others, ArcelorMittal (SA) v. Stave Co Ltd, CAC Case No. 102180; Boehringer Ingelheim Pharma GmbH & Co. KG vs. Karen Liles, CAC Case 102274; ArcelorMittal (SA) v. Crawford Kieran, CAC Case No. 102164; VMWARE, INC. v. Bola Branky, WIPO Case No. D2016-0073; Halliburton Energy Services, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted, WIPO Case No. D2015-2094; Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Moniker Privacy Services, WIPO Case No. D2015-2305).

The Respondent is not using the disputed domain name. As indicated in Paragraph 3.3. of the WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”), "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".
In the instant case: (i) the Complainant's trademark is highly distinctive and has been considered well-known on previous several occasions; (ii) the disputed domain name is an intentional misspelling of the Complainant's trademark; (iii) the Respondent failed to submit a response; and (iv) any possible use of the disputed domain name would result in an attempt to unduly take unfair advantage from the distinctive character and reputation of the Complainant's trademark. Thus, the Respondent is holding the disputed domain name in bad faith.

In light of the above, the Panel is satisfied that also the third and last requirement under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **REMY-COINTRAEU.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2019-03-09

Publish the Decision