Decision for dispute CAC-UDRP-102577

Case number	CAC-UDRP-102577
Time of filing	2019-07-23 09:54:03
Domain names	remy-cointreou.com

Case administrator

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

Complainant

Organization	REMY COINTREAU

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Michelle Johnson

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant's marks include 'RÉMY COINTREAU' (international registration 895405, registered 27 July 2006, in classes including class 33 (alcoholic beverages), on the basis of its French trade mark and designated in various jurisdictions including the United States of America) and 'REMY COINTREAU' (France, 4092651, 22 May 2014).

FACTUAL BACKGROUND

The Complainant is a corporation with its seat in France. It took on its current form in 1990, as a merger (in effect) of the Remy Martin and Cointreau companies, and operates in multiple jurisdictions (declaring that 95 % of its sales are outside of its home country of France). Its main activity is producing and selling alcoholic beverages (spirits) under various brands. It operates various websites and is the registrant for domain names in this regard, including <REMY-COINTREAU.COM> (first registered 7 October 1996).

The Respondent, an individual with a postal address in Oklahoma City, United States of America, registered the disputed domain name on 2 July 2019.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The CAC is unaware whether the written notice was received by the Respondent or not. One e-mail sent to the Respondent was successfully relayed. The Respondent never accessed the online platform.

The Complainant contends that the disputed domain name is confusingly similar to its trade marks, and that it is being used for the purposes of generating fraudulent e-mails. It asks for the disputed domain name to 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).

In this case, the Complainant has shown that the disputed domain name is confusingly similar to its trade marks.

The only differences between the mark in which the Complainant has rights (e.g. REMY COINTREAU) and the disputed domain name <REMY-COINTREOU.COM>, disregarding the gTLD .COM in accordance with usual UDRP practice, are (in the latter) the presence of a hyphen and the second to last character (that is, ending with OU instead of AU).

The Panel is not aware of any meaning associated with the text 'COINTREOU' and the similarity is very strong, differing only by one letter. The Complainant cites earlier decisions under the UDRP where confusing similarity was also found in respect of its mark, with other misspellings (e.g. CAC Case 101900 REMY COINTREAU v. F0rbo <REMY-COIINTREAU.COM>.) and the Panel, of its own motion, notes other recent decisions of a very similar nature (e.g. CAC Case 102572 REMY COINTREAU v Evelyn Mukherjee <RAMY-COINTREAU.COM> and <REMY-CAINTREAU.COM>).

Nothing turns on the presence of a hyphen, given the inability of the international domain name system to represent spaces and the common use of a hyphen (including by the Complainant in respect of its own website) in substitution for such a space.

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 Complainant has declared that the Respondent is not affiliated with nor authorised by it in any way, nor does the Respondent carry out any work for or do business with it. Given the failure of the Respondent to participate in these proceedings, and the absence of any website at the disputed domain name, the Panel is not able to identify any possible rights or legitimate interests. Indeed, the record of activity in respect of the disputed domain name (considered in more detail under bad faith, below) confirms the complete absence of plausible rights or legitimate interests.

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 has supplied evidence of the use of the disputed domain name in connection with the sending of fraudulent e-mails. The material supplied shows how the disputed domain name has been used to generate a message, very shortly after the registration of the disputed domain name, purporting to emanate from an employee (with senior financial responsibilities) of the Complainant (directed towards another employee). 'Phishing' is one of the common examples of bad faith use of a domain name set out in the WIPO Jurisprudential Overview (version 3.0, para 3.4) and is often seen, supported by appropriate evidence, in decisions (e.g. WIPO Case No. D2016-2213, Arla Foods v. Michael Guthrie; CAC Case 100921 Teva Pharmaceutical Industries v Whois Privacy Protection Service; CAC Case 102522 Novartis AG v Delia Spurgeon).

Moreover, it is very likely that the Respondent was aware of the Complainant and its mark when registering the disputed domain name, on account of its well-known nature and the high level of similarity. As such, although there is currently no

website available at the disputed domain name (nor evidence that one has been created), the Panel would (if the very compelling evidence regarding 'phishing' not been presented) also have been able to consider this dispute as one of 'passive holding' (see WIPO Case No. D2000-0003, Telstra v Nuclear Marshmallows).

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark REMY COINTREAU, and that the disputed domain name is confusingly similar to this mark (differing only by one character and a hyphen). In light of the evidence presented by the Complainant, the Panel finds that the disputed domain name was registered and is being used in bad faith, especially through its use in association with the sending of fraudulent e-mails purporting to emanate from within the Complainant. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2019-08-29

Publish the Decision