Decision for dispute CAC-UDRP-102748

Case number	**CAC-UDRP-102748**
Time of filing	**2019-10-25 10:22:50**
Domain names	**courir.shop**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**GROUPE COURIR**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Name	**Florian Kamps**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Groupe Courier (hereinafter referred to as Complainant) is the proprietor of several trademarks COURIR since 2007 and has set a new benchmark for sneaker fashion industry. Their typical customers are youngsters from 15 to 25 years old mainly in the urban cities. Courir had in 2018 almost 200 stores in France and other 27 in other Countries such as Spain Poland and in the Maghreb.
Groupe Courir is the proprietor of European Community Trademarks and International Registrations such as
IR 941035 of 25.9.2007 for COURIR;
IR 1221963 for COURIR figurative mark of 9.7. 2014;
European Union Reg.6848881 for COURIR since 4.4.2008;
European Union Reg.17257791 for COURIR registered on 27.9.2017.

These trademark registrations predate the registration of the Disputed Domain Name, on 7 October 2019 as shown in the WHOIS .
The Complainant is also proprietor of several domain names including the trademark COURIR and the most important is COURIR.COM.

The Respondent’s domain name CORIRI.SHOP is directed to a page under construction.

FACTUAL BACKGROUND

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

Please see CAC n° 102676 GROUPE COURIR v. StarFolies <courir.store> (“The Panel accepts the Complainant's submission that the disputed domain name is identical to the Complainant's COURIR trademark, noting that the top-level suffix, in this case “.store”, may be disregarded for the purpose of determining whether the disputed domain name is identical or confusingly similar. See Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.”).

The disputed domain name incorporates Complainant's registered mark without authorization, and there is no indication that Respondent has made any active use of the domain name. Use of a domain name for what is essentially a placeholder page lacking substantive content does not give rise to rights or legitimate interests under the Policy. See, e.g., State Farm Mutual Automobile Insurance Co. v. Registration Private, FA 1846160 (Forum July 1, 2019) ("website coming soon"); 24 Hour Fitness USA, Inc. v. Byung Kim / 24hourfitnessparamus, FA 1793620 (Forum July 24, 2018) ("under construction"); Full Swing Golf, Inc. v. Par-T-Golf, FA 102749 (Forum Jan. 8, 2002) ("Respondent’s use of the disputed domain name to host an “under construction” page cannot constitute a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii).”). See also BMW AG v. Loophole, D2000-1156 (WIPO Oct. 26, 2000) (finding no rights in the domain name where Respondent claimed to be using the domain name for a non-commercial purpose but had made no actual use of the domain name); see also Media West-GSI, Inc., & Gannett Satellite Info. Network, Inc. v. Macafee, D2000-1032 (WIPO Oct. 6, 2000) (finding no rights and legitimate interests where Respondent was not commonly known by the BASEBALL WEEKLY mark and made no use of the domain name other than to state that the “web site for domain name BASEBALLWEEKLY.COM is under construction”).

By using the domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. See Kellogg North America Co. v. Richard Harvey / Kellogg Co., FA 1752030 (Forum Nov. 16, 2017) ("Respondent registered and used the <kelloggscompany.org> to create confusion by using the KELLOGG'S mark because there is no plausible or good-faith logic to suggest otherwise.").

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

A. THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE COMPLAINANT'S TRADEMARK

The domain name COURIR.SHOP (hereinafter referred to as the “disputed domain name”) incorporates the Complainant’s well-known, registered trademark COURIR. The addition of the gTLD “.shop” does not add any distinctiveness to the disputed domain name.
As the term “COURIR” is distinctively recognizable in the disputed domain name, the disputed domain name should be considered identical or confusingly similar to the above listed Complainant’s trademarks.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

The Complainant has never granted the Respondent any right to use the COURIR trademarks within the disputed domain name, nor is the Respondent affiliated to the Complainant in any form. Furthermore the disputed domain name currently resolves to a page under construction which displays a content in French language showing that it is intended to target French or French speaking public

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name or the major part of it. When entering the terms COURIR in the Google search engine, the returned results all point to the Complainant and its business activity.

There is no evidence showing that the Respondent’s use of the disputed domain name is in connection with a bona fide offering of goods or services.

Taking into account of the above, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.

C. THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

It has to be highlighted that the Complainant’s trademarks predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use these trademarks nor to register the disputed domain name. The Respondent has chosen to incorporate the trademark COURIR in the disputed domain name with no additional element. From the Complainant’s perspective, it is very likely that the Respondent had the trademark in mind when he registered the disputed domain name and registered it only to mislead Internet users. The Respondent was in bad faith at the moment of the registration of the disputed domain name as well as in its use later on through phishing mails.

Furthermore the website linked to the disputed domain name is under construction and the language applied in that page is French and therefore it is a indirect admission that the Respondent is likely to be exposed to the trademark COURIR the use of which is so extended especially in France.
Respondent’s use of the disputed domain name to host an “under construction page” cannot constitute a legitimate noncommercial or fair use see Full Swing Golf,Inc vs ParT-Golf FA 102749 (Forum Jan.8,2002). The same reasoning can be found in WIPO October 26, 2000 BMW vs Loophole D2000-1156 and other decisions.

Therefore, it is reasonable to conclude that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or website of others, by creating a likelihood of confusion with the Complainant’s trademark. .SHOP is a direct competitor of the legitimate on line sale by the Complainant.

SUMMARY

To summarize, 1) the trademark registrations COURIR predate the registration of the disputed domain name; 2) The Respondent bears no relationship to the trademarks or the Complaint; it is not commonly known by the disputed domain name nor that has it interest over the disputed domain name; 3) The Respondent has been using the disputed domain name with the likely intention to compete in the on line sales with the Complainant; 4) the intended customers were French or French speaking customers and as such they are exposed to the notoriety of the Complainant's trademark. Consequently, the Respondent should be considered to have registered and use the disputed domain name identical to the Complainant in bad faith. The Complainant has not found that the Respondent has no legitimate right or interest in using it even if it has a under construction page.

Principal Reasons for the Decision
The Panel is satisfied with Complainant's arguments and supporting evidence on the three UDRP prongs on (i) confusing similarity of the disputed domain name with Complainant's registered and well known brand, which has been acknowledged in a series of the judicial and domain name disputes case-law; (ii) the lack of legitimate interest on Respondent, and (iii) the bad faith requirement.

Massimo Cimoli

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **COURIR.SHOP**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2019-12-06

Publish the Decision