Decision for dispute CAC-UDRP-103072

Case number	CAC-UDRP-103072
Time of filing	2020-05-22 10:40:58
Domain names	remymartinlastre.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	E. REMY MARTIN & C°

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Cyan Yo

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks. In particular, E. REMY MARTIN & C° owns:

- US trademark REMY MARTIN n. 749501 registered on May 14, 1963 and duly renewed for class 33.
- International trademark REMY MARTIN n. 236184 registered on October 1, 1960 and duly renewed for class 33.
- International trademark REMY-MARTIN n. 457204 registered on December 16, 1980 and duly renewed for classes 32 and 33.
- International trademark REMY MARTIN n. 508092 registered on December 1, 1986 and duly renewed for classes 32 and 33.
- International trademark REMY MARTIN n. 1021309 registered on September 18, 2009 and duly renewed for classes 29, 30, 35, 41 and 43.
- French trademark application REMY MARTIN L'ASTRE n. 4635979 filed on March 31, 2020 for class 33.
- US trademark application REMY MARTIN L'ASTRE n. 88902780 filed on May 9, 2020 for class 33.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

Founded in 1724, E. REMY MARTIN & C° is a France based company and a branch of the REMY COINTREAU Group engaged in producing and distributing alcoholic beverages worldwide.

According to the information made available by the Complainant, the E. REMY MARTIN & C° company is specialized in the production of premium quality cognacs and the REMY MARTIN trademark is used to designate all the different products of the collection which are: REMY MARTIN VSOP, REMY MARTIN XO, REMY MARTIN 1738 ACCORD ROYAL, REMY MARTIN CLUB, REMY MARTIN CENTAURE, LOUIS XIII DE REMY MARTIN.

The Complainant also informs that today, REMY MARTIN is one of the most popular cognac brand in the world and a symbol of the French lifestyle all around the world.

The Complainant has shown that the trademark REMY MARTIN enjoys of reputation and has also an important tradition since it was officially registered by the Complainant for the first time in France in 1877.

The Complainant, at present time, is the owner of numerous trademark registrations for REMY MARTIN, in particular said trademark appears to be protected in France, in the United States of America and in many other countries of the world through different International registrations. In addition the Complainant owns trademark applications in France and in the United States of America for REMY MARTIN L'ASTRE.

Furthermore, the Complainant also owns a number of domain names containing the wording REMY MARTIN such as <remymartin.com> registered on 1997 while the Respondent registered the disputed domain name <remymartinlastre.com> on May 9, 2020.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's REMY MARTIN mark since the disputed domain name wholly incorporates the mark, simply adding to it the generic term LASTRE which clearly refers to the new trademark (REMY MARTIN L'ASTRE) filed by the Complainant a few days before the registration of the domain name in dispute.

In addition, the Complainant believes that the Respondent has no rights or legitimate interests in respect of the disputed domain name since the Complainant has never granted the Respondent any authorization, consent, right or license to use the trademark REMY MARTIN within the disputed domain name and due to the fact that the Respondent is not affiliated with the Complainant in any way. The Complainant also assumes that the Respondent is not commonly known by the name REMY MARTIN.

The Complainant notes that the Respondent has associated the disputed domain name <remymartinlastre.com> with a website which resolves to a parking page displaying a general offer to sell the domain for 990 USD. Therefore, the Complainant contends that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evince bad faith registration and use.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1) The Panel finds that the Complainant has proven that it is the owner of rights in the trademark REMY MARTIN and that said mark is known as the Complainant's mark worldwide. Of high relevance is the circumstance that there is a consistent number of domain names including REMY MARTIN which were held by previous panels to be confusingly similar to the REMY MARTIN trademark of the Complainant (see for instance WIPO Case No. DSE2019-0032, E. Remy Martin & Co v. C. L. <remymartin.se>; WIPO Case No. DNU2017-0002, E. Remy Martin & Co. Petar Ivanov <remymartin.nu>; - WIPO Case No. D2017-2102, E. Remy Martin & C v. Zhang Xiao <remymartin.sale>). The Panel also finds that the disputed domain name is confusingly similar to the Complainant’s trademark since adding a generic wording to a domain name, such as “lastre” (with the meaning of "the star"), is not sufficient to escape the finding of similarity and does not change the overall impression of the designation as being connected to the trademark of the Complainant. Furthermore, in this case, the wording "lastre" exactly refers to the new trademark REMY MARTIN L'ASTRE filed in France and in the United States of America by the Complainant a few days before the registration of the domain name in dispute. The Panel therefore finds that paragraph 4(a)(i) of the Policy has been established.

2) The Complainant has long standing rights in the mark REMY MARTIN. The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and as the Respondent was never authorized or licensed or otherwise permitted by the Complainant to use the disputed domain name. The Respondent, in the absence of any response, has not shown any facts or elements to justify legitimate rights or interests in the disputed domain name. Therefore, on the basis of the evidence submitted and in the absence of a response the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

3) Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith pursuant to Paragraph 4(a)(iii) of the Policy:

(i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such

conduct; or

(iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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.

The Complainant has shown that the website linked to the domain name in dispute resolved in a page in which the same disputed domain name was offered for sale for USD 990. The Panel's note that the domain name in dispute was used in connection with a Respondent's public offer of the disputed domain name for sale for a price exceeding the registration cost of a domain name. Recently, previous Panel noted that a Respondent's public offer of the disputed domain name for sale does not fall within the example of evidence of bad faith in paragraph 4(b)(i) of the Policy since it requires a direct offer to the complainant or one of its competitors. However the same Panels have also noted that a general offer for sale of the disputed domain name is sufficient evidence of bad faith (see Intesa San Paolo S.p.A. v. Domain Administrator, See PrivacyGuardian/Vildan Erdogan, WIPO Case No. D2018-0824 and Intesa San Paolo S.p.A. v. Domain Administrator, See PrivacyGuardian/Mesut Erdogan, WIPO Case No. D2018-0570). In general, it is a clear practice of the Panels, to consider bad faith registration and use in cases in which the disputed domain name is offered for sale to the broad public on web pages or via reseller and internet auctions (see Easyjet Airline Company Ltd v. Andrew Steggles, WIPO Case No. D 2000-0024; EMI PLC v. JASON MACE, WIPO Case No. D2000-0712; The Avenue, Inc. and Retail Incorporated v. Chris Guirguis doing business as Lighthouse Web Design and/or Cannibal and Sam Guirguis, WIPO Case No. D2000-0013; 3636275 Canada, dba eResolution v. eResolution.com, WIPO Case No. D2000-0110; Louis Vuitton Malletier v. J.N. Prade WIPO Case No. D2000-1115). The Panel shares the opinion expressed in the above mentioned decisions. In particular, in the Panel's view, the Respondent's general offer to sell the domain name constitutes a clear evidence of bad faith registration and use since it unequivocally shows that the Respondent knew or should have known that someone with rights in the REMY MARTIN mark would have an interest in the domain name in dispute. This especially in consideration of the fact that a new trademark of the REMY MARTIN family of marks (corresponding exactly with the domain name in dispute) was recently filed at the time in which the domain name in dispute was registered. Therefore, the Panel concludes that the registration and offering for sale to the general public for USD 990 of the disputed domain name constitutes bad faith registration and use of the domain name and that therefore the Complainant has satisfied also the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **REMYMARTINLASTRE.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2020-06-23

Publish the Decision