Decision for dispute CAC-UDRP-103304

Case number	CAC-UDRP-103304
Time of filing	2020-10-05 09:35:06
Domain names	ruduecommerce.com

Case administrator

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

Complainant

Organization	RueDuCommerce

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Jose Ruacho

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of certain trademark registrations that consist of or contain the mark RUE DU COMMERCE (the "RUE DU COMMERCE Trademark"), including French Reg. Nos. 3,036,950 (registered June 27, 2000) for use in connection with goods and services in classes 9, 16, 28, 35, 38, 41, and 42; and 3,374,566 (registered July 29, 2005) for use in connection with goods and services in classes 9, 16, 28, 35, 38, 41, and 42.

FACTUAL BACKGROUND

Complainant states that it is engaged in "internet-order selling business activities on web sites accessible in particular at the addresses www.rueducommerce.com and www.rueducommerce.fr"; that it "has gained an important notoriety among the French net surfers and consumers"; that it "is now a major e-merchant in France whose honorability and reliability are well known from the Internet users"; and that its "website www.rueducommerce.com is part of the Top 15 of the most visited e-commerce websites in France… with more than 4.2 million of visits by month."

The Disputed Domain Name was created on June 4, 2020, and is being used in connection with "an active website that contains a portfolio of links rerouting the internet users' and the customers' to the Complainant's competitors' websites."

Complainant attempted to contact Respondent about the Disputed Domain Name via emails sent on June 10 and 17, 2020, but Respondent has never replied.

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the disputed domain name is confusingly similar to the RUE DU COMMERCE Trademark because, inter alia, "only one letter, namely the 'e' of 'rue', has been interchanged and placed before the common noun 'commerce'"; "[t]his replacement is only a way to create confusion in consumers' mind and is not sufficient to create a distinction between the two names"; and "the three words characterizing the Complainant's trademark are 'rue', 'du' and 'commerce' and remain strictly the same."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "Complainant has not licensed or otherwise permitted the Respondent to use his brand or to apply for or use any domain name incorporating it"; "Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant"; and "the litigious domain name is used on an active website that contains a portfolio of links rerouting the internet users' and the customers' to the Complainant's competitors' websites."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "[t]he main purpose of the disputed domain name registration has been to prevent the Complainant, legitimate owner of 'Rueducommerce' trademark, from reflecting the brand in a corresponding domain name"; and "the Respondent used its website to sell some goods that might also be sold by RueDuCommerce."

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the RUE DU COMMERCE Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the RUE DU COMMERCE Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "ruduecommerce")

because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the Disputed Domain Name contains a typographical variation of the RUE DU COMMERCE Trademark, by including the entirety of the RUE DU COMMERCE Trademark with a simple misspelling: moving the letter “e” from “rue” and placing it instead after the word “du.” As set forth in section 1.7 of WIPO Overview 3.0, “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” Further, section 1.9 of WIPO Overview 3.0 states: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element…. Examples of such typos include… the inversion of letters and numbers.”

Accordingly, the Panel finds that Complainant has proven the first element of the UDRP.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “Complainant has not licensed or otherwise permitted the Respondent to use his brand or to apply for or use any domain name incorporating it”; “Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant”; and “the litigious domain name is used on an active website that contains a portfolio of links rerouting the internet users’ and the customers’ to the Complainant’s competitors’ websites.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s 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 registrant’s website or location or of a product or service on the registrant’s website or location.

Numerous panels under the UDRP have found the registration and use of a domain name that is confusingly similar to a complainant's trademark to constitute bad faith pursuant to paragraph 4(b)(iv) of the UDRP where, as here, the domain name is associated with monetized parking pages that could be construed as associated with the complainant. See, e.g., Wal-Mart Stores, Inc. v. Whois Privacy, Inc., WIPO Case No. D2005 0850; Columbia Pictures Industries, Inc. v. North West Enterprise, Inc., WIPO Case No. D2006-0951; and Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service, WIPO Case No. D2011-1753.

Further, Respondent's failure to respond to Complainant's demand letter is additional evidence of bad faith. Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party, WIPO Case No. D2000-0330; and RRI Financial, Inc., v. Ray Chen, WIPO Case No. D2001-1242.

Accordingly, the Panel finds that Complainant has proven 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. **RUDUECOMMERCE.COM**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2020-11-13

Publish the Decision