

Decision for dispute CAC-UDRP-103587

Case number	CAC-UDRP-103587
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Time of filing	2021-02-17 09:43:17
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Domain names	courir-factory.com
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Case administrator

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

Organization	GROUPE COURIR
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Organization	DysonFr
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registrations for the trademark "COURIR" and "C COURIR":

- The international trademark COURIR No. 941035 registered since September 25, 2007;
- The European trademark COURIR No. 006848881 registered since April 4, 2008;
- The international semi-figurative trademark C COURIR No. 1221963 registered since July 9, 2014;
- The European trademark COURIR No. 017257791 registered since September 27, 2017.

The Complainant is also the owner of the domain name <COURIR.COM> since February 14, 1998.

FACTUAL BACKGROUND

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

GROUPE COURIR (the Complainant) carries on business in, amongst others, the sneaker fashion industry.

The COURIR stores are aimed at an urban clientele from 15 to 25 years old. With its selection of sneakers, ready-to-wear and fashion accessories for men, women and children, COURIR had in 2018 188 stores and 50 affiliated stores in France.

The Complainant is also present internationally, with 27 stores located in Spain, Poland and in the Maghreb, the Middle East and overseas territories.

The Complainant has established a strong reputation and goodwill in its trademarks.

On February 11, 2021, the Respondent registered the domain name <COURIR-FACTORY.COM>.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED

The Complainant's Legal Grounds are set out in its Amended complaint filed on February 17, 2021. The Panel refers to and repeats them herein *seriatim*.

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).

CONFUSINGLY SIMILAR

The Complainant has demonstrated, to the satisfaction of the Panel, that the disputed domain name is 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.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark and branded services "COURIR".

The disputed domain name <COURIR-FACTORY.COM> clearly incorporates the identical sign "COURIR" which is the registered trademark of the Complainant. The addition of the descriptor "FACTORY" does not make the disputed domain name sufficiently distinguishable from the Complainant's trademark "COURIR", particularly as the disputed domain name resolves to a website which reproduces the Complainant's trademark "C COURIR" in its entirety, which in turn invites users of the domain name to draw a connection between the disputed domain name and the Complainant's trademarks. The Panel considers that the lack of distinctiveness makes the disputed domain name <COURIR-FACTORY.COM> confusingly similar to the Complainant's trademark "COURIR".

The Panel further considers that when part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner. The fact that the Complainant's trademark, "COURIR", forms part of the disputed domain name, <COURIR-FACTORY.COM> is sufficient to establish confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc* (WIPO Case No. D2001-0902); *Dr. Ing. h.c. F. Porsche AG v Vasily Terkin* (WIPO Case No D2003-003-0888).

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).

Paragraph 4(c) of the Policy sets out the circumstances that could be proved by evidence to demonstrate a respondent's rights

or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy.

A respondent is only required to satisfy the Panel of any one of the circumstances set out in paragraph 4(c) of the Policy. The use of the conjunction 'OR' makes this clear. On the other hand, if a complaint is not challenged, as in the present case before the Panel, then a complainant ought to traverse each of the circumstances set out in paragraph 4(c) of the Policy in order to assist the Panel in its evaluation all of the evidence presented.

In the present case, the Complainant contends that the Respondent is not affiliated with it nor authorised by it to use the trademark "COURIR" in any way, and that the Respondent has no rights or legitimate interest in relation to the disputed domain name.

The Panel accepts the uncontradicted contention that the Respondent is not affiliated with the Complainant nor was authorised by the Complainant to use the trademark "COURIR" in any way.

It is necessary, however, for the Panel to evaluate all of the evidence presented. There has been no evidence provided by the Respondent.

The Complainant's evidence, on the other hand, shows that the Respondent uses the disputed domain name to resolve to a website that purports to offer the online purchase of sneakers, in direct competition with the Complainant. It also shows that the website reproduces the Complainant's logo trademark "C COURIER" in its entirety.

Accordingly, the Panel is prepared to draw an adverse inference against the Respondent that the Respondent intended to 'pass off' its goods and services by the use of the disputed domain name as the Complainant, as the Respondent had used a confusingly similar domain name that resolves to a website which offers competing goods for sale and which reproduces without authorisation the Complainant's trademark in its entirety.

The Panel is, therefore, satisfied that the disputed domain name was not used in connection with a bona fide offering of goods or services under paragraph 4(c)(i) of the Policy, nor for a legitimate non-commercial or fair use under paragraph 4(c)(iii) of the Policy.

The evidence also does not indicate that the Respondent is commonly known by the disputed domain name. WHOIS information no similar to the disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group (Forum Case No. FA 1781783). The evidence shows that the disputed domain name was registered by the Respondent many years after the Complainant's registration for the trademark "COURIR".

The Panel is, therefore, satisfied that the Respondent is not known by the domain name under paragraph 4(c)(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).

REGISTRATION IN BAD FAITH

The Panel accepts the uncontested evidence that the Complainant's trademark registrations predate the Respondent's registration of the disputed domain name, and the Respondent has never been authorized by the Complainant to register the disputed domain name.

As no administrative compliant response was made by the Respondent, the Panel is prepared to accept the uncontroverted contention that it is likely that the Respondent knew about the Complainant's trademarks given the Complainant's strong

reputation and goodwill in its trademarks.

The Panel finds, from the evidence, that given the French language being used on the Complainant's website and the Complainant's reputation in the sneaker industry by reference to its distinctive mark "COURIR" that the disputed domain name was registered in bad faith by the Respondent.

USE IN BAD FAITH

As noted above, the evidence shows that the Respondent uses the disputed domain name to offer goods or services in competition with the Complainant or similar to that offered by the Complainant.

The Panel accepts that this conduct, without any evidence adduced to the contrary, constitutes evidence of bad faith by the Respondent. See *Bittrex, Inc. v. Monty Rj / Media Hub* (Forum Case No. FA 1796494); *Bed Bath & Beyond Procurement Co. Inc. n/k/a/ Liberty Procurement Co. Inc. v. Fermon Broome / Broome International Consortium LLC* (Forum Case No. FA 1795426); *Xylem Inc. and Xylem IP Holdings LLC v. Yens BaoHu YiKaiQi* (Forum Case No. FA 1612750).

The evidence shows that the disputed domain name resolves to a website that reproduces the Complainant's logo trademark "COURIER" in its entirety without the Complainant's authorisation. This evidence alone indicates bad faith on part of the Respondent in the form of an intention by the Respondent to capitalise on the Complainant's business reputation and trademarks without authorisation. This evidence supports the circumstances set out in paragraph 4(b)(iv) of the Policy.

The Panel accepts, upon evaluating the evidence, that the Respondent uses the disputed domain name to divert Internet users searching for Complainant's website to the Respondent's competing website, and to create a likelihood of confusion with Complainant's mark for Respondent's commercial gain by offering competing products. This is persuasive evidence of use in bad faith.

Accordingly, the Panel finds that 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

The disputed domain name is confusingly similar to the Complainant's well-known trademarks as the Complainant's trademark is wholly incorporated both therein and on the website to which the disputed domain name resolves to.

This, combined with the fact that the disputed domain name resolves to a website which contains offering goods and services in direct competition with that offered by the Complainant, indicates an intention by the Respondent to 'pass off' its goods and services by the use of the disputed domain name as the Complainant for the Respondent's commercial gain. Accordingly, it can be inferred that the Respondent does not have any rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **COURIR-FACTORY.COM**: Transferred

PANELLISTS

Name	Adjunct Prof William Lye, OAM QC
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DATE OF PANEL DECISION	2021-03-22
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Publish the Decision	
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