Decision for dispute CAC-UDRP-101236

Case number	CAC-UDRP-101236
Time of filing	2016-07-11 11:16:29
Domain names	larueducommerce.net, larueducommerce.org

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Karima Anita

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has extensive trademark rights in its “RUEDUCOMMERCE” mark(s). For purposes of this proceeding, Complainant relies on trademarks registered in France (e.g. “RUE DU COMMERCE”, registered on June 27th, 2000 under number 3036950, for goods and services class 9, 16, 28, 35, 38, 41 and 42) and European Union Trademarks (hereinafter “EUTM”)(e.g. “RUE DU COMMERCE.COM”, registered on May 14th, 2009 under number 8299381 for goods and services class 16, 35, 36, 37, 38, 41 and 42).

FACTUAL BACKGROUND

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

BACKGROUND

The RueDuCommerce Company has been registered on April 27th, 1999 under the number B 422 797 720R.C.S. BOBIGNY. The address of its head office is 44 Avenue du CapitaineGlarner, 93400 ST OUEN – FRANCE.

RueDuCommerce is the owner of a portfolio of Trademarks for the course of its internet-order selling business activities on web sites accessible in particular at the addresses <www.rueducommerce.com> and <www.rueducommerce.fr>.

During more than eleven years RueDuCommerce has gained an important notoriety among the French net surfers and consumers. It is now a major e-merchant in France whose honourability and reliability are well known to the Internet users (in that regard the Complainant submits abundant proof).

Since its creation in 1999, RueDuCommerce has identified its products under the trademark “Rue du Commerce”.

This active business of the Complainant is relayed by media (paper, internet and television).

The disputed domain names <www.larueducommerce.org> and <www.larueducommerce.net> were registered on February 26th, 2016.

As far as the Complainant contentions are concerned, the Complainant claims that the disputed domain names are identical to trademarks in which the Complainant has rights.

Furthermore, the Complainant claims that the Respondent has no rights or legitimate interests in disputed domain names. In that regard the Complainant contends it has not licensed or otherwise permitted the Respondent to use its trademark “RUEDUCOMMERCE” or to apply for or use any domain name incorporating it and the Respondent has not demonstrated, as the Policy requires, that he has made preparations to use the disputed domain names in connection with a bona fide offering goods or services. On top of that the Complainant emphasizes that nothing on the websites suggests that the Respondent is making a legitimate commercial or non-commercial business activity with the domain names because the disputed domain names have never been used.

Finally, the Complainant claims that the disputed domain names were registered and have been used in bad faith for given the reputation of the Complainant the Respondent should have been aware of the Complainant’s rights at the time of registration as the Respondent was obliged to determine whether the registration of disputed domain names infringes or violates someone else's rights under paragraph 2 of the Policy. The Complainant also states that the disputed domain names are being passively held.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are 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 Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are 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

1. The main issues under the UDRP are whether:

i. the domain name in dispute is identical or confusingly similar to a domain name or a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the domain name; and

iii. the domain names has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Panel also visited all available websites and public information concerning disputed domain names, namely the WHOIS database and related trademark register databases.

3. The Rules for Uniform Domain Name Dispute Resolution Policy clearly stipulate in paragraph 3 that any person or entity may initiate an administrative proceeding by submitting a Complaint in accordance with the Policy describing according to para (ix), sub para (iii) why the domain name(s) should be considered as having been registered and being used in bad faith.

4. The panel therefore came to the following conclusions:

Domain names to be identical or confusingly similar

a) It is also clear and proven that there is a similarity between some trademarks of the Complainant and the disputed domain name as to the phonetic similarity, optical similarity; conceptual/intellectual similarity. It is constantly decided not only in proceedings at this body but also at WIPO that adding a letter, number, any figure, prefix or a an added part of the domain name to the original trademark is not enough to make a distinction to another original trade mark and/or domain name.

Respondent not having rights or legitimate interest with respect to the disputed domain name

b) The Complainant has clearly proven that it has long standing rights in the mark “RUEDUCOMMERCE” and its variations. The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interest in respect of the disputed domain names and as the Respondent was never authorized to use the domain names by the Complainant. The Respondent, in the absence of any response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain names. The Complainant has not licenced or otherwise permitted the Respondent to use Complainant´s marks in the disputed domain names. On the basis of evidence submitted and in the absence of Response the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Domain name has been registered and is used in bad faith

c) The Uniform Domain Names Dispute Resolution Policy in its paragraph 4 defines what has to be understood as an evidence of the registration and use of the domain name in bad faith. Particularly paragraph 4(b)(iv) of the Policy has to be considered in this case.

It was proven that the Respondent has registered the disputed domain names only after the confusingly similar trademarks of the Complainant had been registered and properly used for a long time in business. It is therefore clear that there is a high probability of a speculative behaviour of the Respondent. On top of that it was not proven that the owner of the disputed domain names is active in business and therefore this based on the previous decision and practice of the arbitrators may lead to the conclusion that the use of the disputed domain names is speculative by the Respondent.

Therefore it has to be concluded that the Respondent has registered/acquired the disputed domain names primarily for the purpose of his own benefit when disrupting the business of the Complainant and therefore the Respondent is using the domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LARUEDUCOMMERCE.NET**: Transferred
2. **LARUEDUCOMMERCE.ORG**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2016-08-09

Publish the Decision