Decision for dispute CAC-UDRP-101266

Case number	CAC-UDRP-101266
Time of filing	2016-08-15 12:04:01
Domain names	rueducommercey.com

Case administrator

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

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Li PINGLONG

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

The Complainant has shown that it owns numerous trademark registrations containing or consisting of terms “RUE DU COMMERCE” in France and the EU (EU trademarks), i.e.:

• French trademark « WWW.RUE DU COMMERCE.COM », registered on 29 July 2005 under number 3374566 goods and services class 9, 16, 28, 35, 38, 41, 42

• French trademark « RUE DU COMMERCE », registered on 27 June 2000 under number 3036950, for goods and services class 9, 16, 28, 35, 38, 41 et 42

• EUTM « RUE DU COMMERCE.COM », registered on 14 May 2009 under number 8299381 for goods and services class 16, 35, 36, 37, 38, 41, 42

• EUTM « RUE DU COMMERCE », registered on 14 May 2009 under number 8299356 for goods and services class 16, 35, 36, 37, 38, 41, 42.

FACTUAL BACKGROUND

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

1.
The Complainant - RueDuCommerce Company - has been registered on 27 April 1999 under the number B 422 797 720 R.C.S. BOBIGNY. The address of its head office is 44 Avenue du Capitaine Glarner, 93400 ST OUEN – FRANCE. It owns the above portfolio of Trademarks covering in particular internet-order selling business activities on web sites accessible amongst others at the addresses <www.rueducommerce.com> and <www.rueducommerce.fr>.

According to the Complainant's undisputed allegations, 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 from the Internet users.

2.
The Complainant further alleges that internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

The disputed domain name <www.rueducommercey.com> has been registered on 19 April 2016 and is currently registered on the name of the Respondent. According to the Complainant and the evidence provided, the website currently resolves to an inactive website. However, the disputed domain name originally provided for an active website selling men and children clothes branded by a well-known trademark in the fashion sector, whose prices, in terms of items sold, appear suspicious.

The Complainant contacted the Respondent by registered mail to the registrar dated 26 April 2016 and further registered mail and email directly to the Respondent dated 5 July 2016. Finally, on 13 July 2016, the Complainant sent a further second recorded delivery mail and email to the Registrant. The Complainant did not receive any answer from the Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

1.
Based on the undisputed multiple trademark registrations cited by the Complainant (listed above) the Panel is satisfied that the Complainant has rights in the trademark RUE DE COMMERCE. The Respondent did not challenge these allegations.

2.
The disputed domain name is confusingly similar to the Complainant’s trademarks and company name RUE DE COMMERCE. The only difference is that compared to said prior rights, one letter has been added at the end of the disputed domain name. The Panel considers this an obvious misspelling of the trademark/company name and therefore, finds the disputed domain name to be confusingly similar to such trademark/company name, since the misspelled prior rights remains the dominant or principal component of the disputed domain name. In addition, these differences make at least no relevant visual and phonetical difference likely to exclude confusing similarity between the Complainant's rights and the disputed domain name.

3.
Furthermore, as a result of the Complainant’s undisputed allegations and without any evidence from the Respondent to the contrary, the Panel is satisfied that the Complainant has also proved the second and third element of the UDRP:

a)
Indeed, it results from the Complainant's undisputed allegations that the Respondent has no rights in the trademark RUE DE COMMERCE. In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant’s business. Moreover, the Respondent has not demonstrated any preparations to use the disputed domain name in connection with a bona fide offering goods or services.

b)
Finally, the Panel is satisfied that the Respondent registered the disputed domain name and is using it in bad faith.

With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith.

In the case at hand, the Panel is satisfied that the cumulation of all the circumstances of the case are found to be indicative of bad faith: (1) According to the Complainant's undisputed allegations, its trademarks have a reputation amongst French internet consumers; (2) the Respondent did not file any response to the complaint; (3) the Respondent did not react on the Complainants warning letters sent before the Complaint has been filed (see decision of this Panel in CAC-case No. 100461 - LESRUESDUCOMMERCE.COM and LESRUESDUCOMMERCE.NET); (4) according to evidence submitted by the Complainant (and not disputed by the Respondent) the disputed domain name used to be an online shop offering men and children clothes branded by a well-known trademark in the fashion sector (i.e. on the balance of probabilities the Panel finds that the Respondent attempted to free-ride on the Complainant's reputation and goodwill for the field of business of the Complainant is internet-order selling).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RUEDUCOMMERCEY.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2016-09-27

Publish the Decision