Decision for dispute CAC-UDRP-100514

Case number	CAC-UDRP-100514
Time of filing	2012-10-15 13:43:55
Domain names	rueducommerc.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	RueDuCommerce

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Organization	Host Master - Transure Enterprise Ltd

OTHER LEGAL PROCEEDINGS

None.

IDENTIFICATION OF RIGHTS

The Complainant, RueDuCommerce SA, enjoys trademark protection in France, the EU and internationally for its name with and without the .com/.fr suffixes under Nice Classification Classes for goods and services 9, 16, 28, 35, 38, 41, 42.

The Respondent has no rights or legitimate interests in respect of the domain name that have been brought to the Panel's notice, other than domain name registration of rueducommerc.com.

FACTUAL BACKGROUND

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

Attached is a Complaint that has been filed against you with the Czech Arbitration Court (the CAC) pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the CAC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in

accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a Complainant) submits a complaint to a dispute resolution service provider, such as the CAC, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name that is the subject of the Complaint in the document that accompanies this Coversheet.

A copy of this Complaint has also been sent to the Registrar with which the domain name that is the subject of the Complaint is registered.

By submitting this Complaint to the CAC the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

CZECH ARBITRATION COURT

RueDuCommerce
44-50 avenue du Capitaine Glarner
93400 Saint Ouen
FRANCE

(Complainant)

-v-

Transure Enterprise Ltd
Mill Mall Suite 6 PO Box 3085 Wickhams Cay 1 Road Town
3085 TORTOLA
VIRGIN ISLANDS (british)
(Respondent)

Disputed Domain Name[s]:
www.rueducommerc.com

COMPLAINT
(Rules, para. 3(b))

I. Introduction

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 24, 1999 and the CAC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. The Parties

A. The Complainant
(Rules, para. 3(b)(ii) and (iii))

[2.] The Complainant in this administrative proceeding is
The RueDuCommerce Company

[3.] The Complainant's contact details are:

Address: 44-50 avenue du Capitaine Glarner
93400 Saint Ouen
FRANCE

Telephone: +33 1 41 66 18 00
Fax: +33 1 41 66 18 03

[4.] The Complainant's authorized representative in this administrative proceeding is:

Maître Cyril CHABERT
Avocat à la Cour d'appel de Paris
3, rue de Logelbach
75017 Paris
FRANCE
Tél : 00 33 (0)1 44 01 46 00
Fax : 00 33 (0)1 44 01 46 01
E-mail : cyril.chabert@chain-avocats.com

[5.] The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material
Method: e-mail
Address: cyril.chabert@chain-avocats.com
Contact: Maître Cyril CHABERT
B. Respondent
(Rules, para. 3(b)(v))

[6.] According to the information available on the Whois database, www.indom.com, Respondent in this administrative proceeding is:
Transure Enterprise Ltd

[7.] All information known to the Complainant regarding how to contact Respondent is as follows:
Transure Enterprise Ltd
Mill Mall Suite 6 PO Box 3085 Wickhams Cay 1 Road Town
3085 Tortola
British Virgin Islands
E-mail contact : hostmaster@transureent.com
Tel: +1.5016482820
Fax: +1.5016482820

III. The Domain Name and Registrar
(Rules, para. 3(b)(vi) and (vii))

[8.] This dispute concerns the domain name identified below:
http://www.rueducommerc.com

[9.] The registrar with whom the domain name is registered is:
Above.com PTY LTD
8 East Concourse
Beaumaris VIC 3193
Australia

IV. Jurisdictional Basis for the Administrative Proceeding
(Rules, paras. 3(a), 3(b)(xv)

[10.] This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy.

V. Factual and Legal Grounds
(Policy, paras. 4(a), (b), (c); Rules, para. 3)

[11.] This Complaint is based on the following grounds:

A. Background
RueDuCommerce Company has been registered on April the 27th, 1999 under the number B 422 797 720 R.C.S. Bobigny. Its head office is situated at 44 Avenue du Capitaine Glarner 93400 ST OUEN.

RueDuCommerce Company is the owner of the following domain names www.rueducommerce.com and www.rueducommerce.fr in order to exploit his trademarks and for its internet-order selling business activities.

During more than eleven years RueDuCommerce has gained an important fame and reputation among the French net surfers and consumers. It is now a major e-merchant in France whose honorability and reliability are known to Internet users.

The trademark 'RUEDUCOMMERCE' is the property of the complainant. The complainant uses the said trademark for the course of its internet-order selling business activities on web sites accessible worldwide. In addition, RueDuCommerce is quoted in the Paris Stock Exchange since 2005. It is considered a leader e-merchant in French market

The complainant has registered the following trademarks in France:

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

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

The complainant has registered the following CTM:

• « RUE DU COMMERCE.COM », registered on 14 May 2009 under number 8299381 for goods and services class 16, 35, 36, 37, 38, 41, 42 .
• « RUE DU COMMERCE », registered on 14 May 2009 under number 8299356 for goods and services class 16, 35, 36, 37, 38,

41, 42.

The complainant has registered the following international trademark:

• « RUE DU COMMERCE », registered on 13 January 2006 under number 882818 for goods and services class 9, 16, 28, 35, 38, 41, 42.

B. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, para. 4(a)(i), Rules, paras. 3(b)(viii), (b)(ix)(1))

The litigious domain name contains the three same joined words as the complainant's protected trademark, only missing the letter 'e': "rueducommerc". There is only this amended letter that differentiates from the CTM trademarks and French trademark and the domain name.

The extension.com is identical to the registered complainant's trademarks.

Respondent's "rueducommerc" domain name is therefore clearly aimed at creating confusion among internet users. Indeed an internet user wanting to visit the complainant's website will end up looking for Respondent's "rueducommerc" website misspelling the words.
As such, this is an obvious case of typosquatting.

C. The Respondent has no rights or legitimate interests in respect of the domain name:
(Policy, para. 4(a)(ii), Rules, para. 3(b)(ix)(2))
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, "rueducommerc.com" has been registered on 15 August 2012.

RUEDUCOMMERCE has tried several times to reach the registrant of the domain name www.rueducommerc.com:

- On August the 16thth, 2012 a recorded delivery mail addressed to Above.com Domain Privacy, and via email (rueducommerc.com).

- On September the 17th, 2012 a recorded delivery mail addressed to Above.com Domain Privacy, and via email (rueducommerc.com).

The company above has not responded to any correspondences and has remained in silence since this date.

There is no reason apart from benefitting from RueDuCommerce's fame while damaging its reputation that could explain the choice of such an identical domain name.

It appears that the domain name was not only registered to enjoy the fame of the complainant and beneficiate from its notoriety, but also causes intentionally harm to the position for competition of RueDuCommerce, since this domain name contains a portfolio of links that refer to websites of client's main competitors.

As such, RueDuCommerce suffers damage from the registered domain name in an illegitimate two-fold manner.

D. The domain name was registered and is being maintained in bad faith.
(Policy, paras. 4(a)(iii), 4(b); Rules, para. 3(b)(ix)(3))

The domain name is registered and is used in bad faith. The purpose of the registration of the disputed domain name has

been to prevent the Complainant, legitimate owner of RUEDUCOMMERCE.com trademarks from reflecting the mark in a corresponding domain name while not exploiting the disputed domain name.

It appears that the disputed domain name was only registered in order to benefit from reputation of the complainant on the Internet and to confuse its clients.

As the registrant of “rueducommerc” has no legal right to use the complainant trademarks’, there is clearly bad faith in maintaining the domain name to the benefit of the respondent.

UDRP rules provide several ways of establishing bad faith. One is where the domain name is inactive and is not being used. Rueducommerc.com is not an operating website, but this website contains a portfolio of links of competitor’s websites.

The fact that the Respondent does not use the domain name shows intention to prevent form third parties from reflecting their trademarks in corresponding domain names.

The anonymity of the registrant and the lack of satisfactory response from Above.com Domain Privacy forbid RueDuCommerce to contact the registrant and to seek damages against him.

Accordingly, the disputed domain name is registered in bad faith.

Conclusion
Respondent has registered and is passively holding a domain name that is identical to the trademark registered and used by the Complainant.
The domain name is registered and renewed to prevent third parties from reflecting their trademarks in corresponding domain names.
Despite good faith attempts, the Complainant has not managed to find anything that would suggest that the Respondent has rights or legitimate interest in holding the domain name.
Accordingly, the Complainant respectfully submits that the disputed domain name is transferred to the Complainant, the RueDuCommerce Company.

Paris, October 10th, 2012

Cyril CHABERT
Enclosed:
1. Printouts from Whois trademark database dated August the 16th, 2012
2. Printouts from Whois trademark database dated October the 10h, 2012
3. Proof of the trademarks owned by the complainant
4. Recorded delivery mail dated August the 16th, 2012
5. E-mail dated August the 16th 2012
6. Recorded delivery mail dated September the 17th, 2012
7. E-mail dated September the 17th, 2012
8. Print-outs from www.rueducommerc.com

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

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

The Complainant, RueDuCommerce SA, is a French company that is the registrant of ruedecommerce.com and ruedecommerce.fr. It has over several years gained significant fame and reputation as a major e-merchant in France. The Respondent is Above.com Domain Privacy, Australia, and its registrar is Above.com Pty Ltd, Australia.

Complainant has attempted to make contact with Respondent, by email and by registered letter including details of Complainant's rights, but, as is also the case in this proceeding, received no response. The Panel attaches significance to this lack of response.

The www.ruedecommerc.com site is not currently active but proof has been adduced that it has been in use and contained a series of links to other websites. The quality of Complainant's scanned printout showing the date of its website consultation is so poor that it is barely admissible; enough is, though, visible to reveal a date during 2012 and this is taken into account. The Panel, however, accords no weight to the assertion that the links on the site were intended to cause harm to Complainant's competitive position. This is because no details were given of which sites were linked. The Complainant hence failed to make its case on this subsidiary assertion. It also failed to convince the Panel as to Complainant's argument that "[t]he fact that the Respondent does not use the domain name shows intention to prevent form third parties from reflecting their trademarks in corresponding domain names." The Respondent did, in fact, use the domain name, while it is not incumbent on a trademark holder to register a misspelled form of its mark.

Despite these defects in Complainant's argumentation, it remains abundantly clear from the evidence submitted, including the failure of Respondent to enter a response, that the domain name was registered without right or legitimate interest in order to take advantage of the fame of Complainant's sites and thereby the notoriety enjoyed by Complainant's mark, in light of the evident likelihood that traffic might erroneously be directed to Respondent's site. The close similarity of ruedecommerc.com to ruedecommerce.com is sufficient to produce confusion among consumers and it is clear that Respondent's site was also aimed at consumers, notably French-speaking ones. This can therefore be regarded as an instance of bad faith registration and use characterized as typosquatting.

The Panel therefore has no hesitation in ordering the transfer of http://www.rueducommerc.com to Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RUEDUCOMMERC.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2012-11-24

Publish the Decision