Decision for dispute CAC-UDRP-105626

Case number	**CAC-UDRP-105626**
Time of filing	**2023-07-17 09:23:34**
Domain names	**rermy-cointreau.com**

Case administrator

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

Complainant

Organization	**REMY COINTREAU**

Complainant representative

Organization	**NAMESHIELD S.A.S.**

Respondent

Name	**Marcie Smerdon**

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

In these proceedings, the Complainant relies on the following trademark:

- RÉMY COINTREAU (word), International Registration No. 895405, registered as of July 27, 2006 and duly renewed, in the name of REMY COINTREAU (the Complainant), with designations all around the world, including also the United States of America, where the Respondent is based.

The Complainant also relies on the well-known/famous character of its mark REMY COINTREAU.

FACTUAL BACKGROUND

The Complainant is a known French family-owned spirits group, producing mainly cognac, liqueurs and champagne. As it is claimed on its website, the Complainant’s origins date back to 1724. Ever since, the Complainant has acquired commercial presence all around the world.

The Complainant owns a fair-sized portfolio of trademarks, including especially the words "RÉMY COINTREAU", among which a French and an International registration dating back to 2006. It also owns a certain number of related domain names, such as <remy-cointreau.com> since October 7, 1996.

The disputed domain name <rermy-cointreau.com> was registered on July 6, 2023 by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its RÉMY COINTREAU trademark, as it is a misspelling of this wholly incorporated trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere misspelling of the Complainant's trademark does not change the overall impression of a most likely connection with the trademark RÉMY COINTREAU of the Complainant. As to the gTLD ".com", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given the distinctiveness and reputation of the RÉMY COINTREAU trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name as a parking website with commercial links for its own commercial gain, a fact that -in combination with the incorporation of a famous trademark in a domain name- proves use in bad faith.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:

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 Policy).

The disputed domain name consists of the Complainant's whole trademark (RÉMY COINTREAU), written in a misspelled way. The random change of the word "remy" to "rermy", as well as the simple addition of a dash between the two words RÉMY COINTREAU in the disputed domain name, are not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant. This is a clear case of typosquatting.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for complainant to establish a prima facie case that respondent lacks rights or legitimate interests in a domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the RÉMY COINTREAU trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark and the fact that the disputed domain name fully incorporates this trademark (even in a misspelled way), it is evident that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third-party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to a parking website, with commercial links towards competitors of the Complainant, among others. This fact is to be combined with the full incorporation of the Complainant’s reputable trademark in the disputed domain name, in an attempt of the Respondent to attract users for commercial gain to the disputed website. For this Panel, same as for many previous panels, such misleading behaviour clearly amounts to use in bad faith. This view is reinforced by the set-up of the disputed domain name with MX records. Thus, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 wholly incorporates the Complainant's trademark, written in a misspelled way. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademark to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's reputable trademark. Its use of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **rermy-cointreau.com**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION	2023-08-21

Publish the Decision