

Decision for dispute CAC-UDRP-105742

Case number CAC-UDRP-105742

Time of filing 2023-08-31 11:02:03

Domain names leroymerlin-b2b.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization GROUPE ADEO

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Douglas Smith

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 has evidenced to be the owner of the following trademark registrations:

- word mark LEROY-MERLIN, International Registration (World Intellectual Property Organization, WIPO), registration No. 591251, registration date: July 15, 1992, status: active;

- word mark LEROY MERLIN, European Union Intellectual Property Office (EUIPO), registration No.: 010843597, registration date: December 7, 2012, status: active.

Also, the Complainant has substantiated to own e.g. since 2003 the domain name <leroymerlin.ru> which resolves to the Complainant's main website for the territory of Russia at "www.leroymerlin.ru", intended to promote the Complainant's home living products and related services in that area.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be

transferred to it.

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).

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).

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).

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

First, the Panel finds that the disputed domain name <leroymerlin-b2b.com> is confusingly similar to the Complainant's LEROY MERLIN trademark, as it incorporates the latter entirely (or at least almost entirely by omitting the hyphen), simply added by the descriptive term "b2b". Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark. Also, it has been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of descriptive or other terms, such as e.g. the term "b2b" (a common abbreviation for the phrase "business to business"), is not capable to dispel the confusing similarity arising from such (almost) entire incorporation of the Complainant's LEROY MERLIN trademark in the disputed domain name.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Second, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain name, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. The Respondent has not been licensed or otherwise authorized to use the Complainant's LEROY MERLIN trademark, either as a domain name or in any other way. Also, there is no reason to believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the terms "leroy" and/or "merlin" on its own. Finally, the Complainant has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to the Complainant's own website at "www.leroymerlin.ru" without any authorization to do so, and that MX servers have been activated under the disputed domain name, possibly intending to send unauthorized/illegal emails thereunder. Such making use of the disputed domain name, obviously in a fraudulent manner, neither qualifies as a bona fide nor as a legitimate noncommercial or fair use under the UDRP and may not of itself confer rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that, therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

Third, the Panel holds that the disputed domain name was registered and is being used by the Respondent in bad faith. It is obvious from the circumstances to this case that the Respondent was well aware of the Complainant's rights in the LEROY MERLIN trademark when registering the disputed domain name, and that the latter is directly targeting such trademark. Moreover, letting the disputed domain name, which is confusingly similar to the Complainant's LEROY MERLIN trademark, resolve to the Complainant's

own Russian website at “www.leroymerlin.ru” without any authorization to do so, leaves no doubts that the Respondent, by registering and making use of the disputed domain name, had the intention to somehow unjustifiably profit from the undisputed reputation attached to the Complainant’s LEROY MERLIN trademark and related website(s). Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the larger meaning of paragraph 4(b)(iv) of the Policy. This finding also takes into consideration that MX servers have been activated under the disputed domain name which at least allows the assumption that the Respondent intends to make use at some point of the disputed domain name in connection with unauthorized email services which in turn are inconceivable of being of a good faith nature.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **leroymerlin-b2b.com**: Transferred

PANELLISTS

Name	Stephanie Hartung
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DATE OF PANEL DECISION **2023-10-02**

Publish the Decision
