Decision for dispute CAC-UDRP-106027

Case number	CAC-UDRP-106027
Time of filing	2023-12-01 07:38:09
Domain names	remy-cointerau.com

Case administrator

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

Complainant

Organization	REMY COINTREAU

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	cabinet bocuhara

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 is the holder of several trademarks including the following:

- REMY COINTREAU, international word mark No. 895405, registered on July 27, 2006 in classes 32, 33 and 43.

FACTUAL BACKGROUND

The Complainant, REMY COINTREAU, is a company that operates in the production and the sale of cognacs, spirits and liqueurs.

The Complainant is the owner of the trademark REMY COINTREAU, international word mark No. 895405, registered on July 27, 2006 in classes 32, 33 and 43.

The Complainant is also the owner of the domain name <remy-cointreau.com>.

The disputed domain name <remy-cointerau.com> was registered on November 28, 2023 and resolves to a parking page with pay-per-click links.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to a trademark in which it has rights.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent is not known as the disputed domain name and not related in any way with the Complainant. The Complainant claims that he does not carry out any activity for, nor has any business with the Respondent.

Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the use of its trademark in the disputed domain name gives rise to the inference that the Respondent ought to have registered the disputed domain name for its trademark value. The Complainant further claims that the Respondent has attempted to attract Internet users to his own website thanks to the Complainant's trademarks for its own commercial gain and that the disputed domain name has been used in a phishing scheme.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant shows to be the holder of the registered REMY COINTREAU trademark, which is used in connection with the Complainant's beverage business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <remy-cointerau.com> appears to be an obvious misspelling of the Complainant's REMY COINTREAU trademark: the letters "R" and "E" of the second term of the trademark have been reversed. This practice is commonly referred to as "typosquatting".

The Panel finds that this small change does not prevent the disputed domain name from being confusingly similar (see section 1.9 of the WIPO Overview 3.0; Boehringer Ingelheim Pharma GmbH & Co.KG v. brenda llc, CAC Case No. 103434, <b0ehringer-ingelhelm.com>; Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd, CAC Case No. 102708, <boehrinqer-ingelheim.com>).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is known as "cabinet bocuhara". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. In this case, the Panel finds that the disputed domain name can be considered as virtually identical to the Complainant's REMY COINTREAU trademark as it simply reverses 2 letters of the mark. The disputed domain name is also almost identical to the Complainant's domain name <remy-cointreau.com> linked to the Complainant's official website, which further increases the risk of implied affiliation.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. Indeed, the disputed domain name resolves to a parking page containing pay-per-click ("PPC") links such as "Remy".

Given the distinctive character of the Complainant's mark, the Panel finds that such sponsored links may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the disputed domain name in connection with a bona fide offering of goods or services (see section 2.9 of the WIPO Overview 3.0).

Moreover, according to the Complainant's evidence, the Respondent used the disputed domain name to impersonate one of the Complainant's employees in order to receive undue payment. Panels have held that the use of a domain name for illegal activity, here, phishing, can never confer rights or legitimate interests on a respondent (see WIPO Overview 3.0, section 2.13.1).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the REMY COINTREAU trademark at the moment it registered the disputed domain name, since the disputed domain name is identical to the Complainant's distinctive REMY COINTREAU trademark except for the reversal of two letters. Moreover, the well-known and distinctive character of the Complainant's REMY COINTREAU trademark has been confirmed by previous UDRP Panels:

- REMY COINTREAU v. Teys USA, Inc., CAC Case No. 104069;
- REMY COINTREAU v. joyce gardner, CAC Case No. 103032.

The Panel further holds that the misspelling of the Complainant's mark in the disputed domain name is a form of typosquatting which is further evidence of bad faith (ESPN, Inc. v. XC2, WIPO Case No. D2005-0444; WestJet Airlines Ltd. v. Taranga Services Pty Ltd, WIPO Case No. D2010-1814; and Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager, WIPO Case No. D2011-1951).

The disputed domain name appears to resolve to a parking page containing PPC links. In the circumstances of the present case, the Panel's considers this to indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the disputed domain name that is confusingly similar to the Complainant's trademark (as is the case here) to obtain click-through-revenue constitutes bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the disputed domain name under its control (see section 3.5 of the WIPO Overview 3.0).

As previously mentioned, according to the Complainant's evidence, the Respondent used the disputed domain name to impersonate one of the Complainant's employees in order to receive undue payment. Panels have held that the use of a domain name for illegal activity here, phishing, constitutes bad faith (see WIPO Overview 3 .0, section 3.4).

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **remy-cointerau.com**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2024-01-11

Publish the Decision