Decision for dispute CAC-UDRP-106084

Case number	CAC-UDRP-106084
Time of filing	2023-12-19 13:22:34
Domain names	leroy-merline.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Konstantin Sokolov

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <leroy-merline.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- International trade mark registration no. 591251, filed on 15 July 1992, for the figurative mark LEROY-MERLIN, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 16, 17, 19, 20, 21, 22, 25, 27, 28, 31 and 37 of the Nice Classification; and
- EU trade mark registration no. 010843597, filed on 27 April 2012, for the word mark LEROY MERLIN, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 31, 35, 36, 37, 40, 41, 42 and 44 of the Nice Classification.

(Hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark LEROY MERLIN'; or 'the (trade mark) LEROY MERLIN' (trade mark) interchangeably).

The disputed domain name was registered on 13 December 2023 and, at the time of writing of this decision, it does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is a French company specialised in home improvement projects and DIY. The Complainant's pioneering company, Leroy Merlin, was founded in 1923 and has become a leader in the global DIY market, covering a wide array of home solutions, such as plumbing, lighting, heating, electricity, and more.

In addition to the trade mark mentioned in the section 'Identification of Rights', the Complainant also owns numerous domain names bearing the trade mark LEROY MERLIN, most notably <leroymerlin.fr> and <leroymerlin.com>, both of which registered in 1996.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant avers that the disputed domain name <leroy-merline.com> is confusingly similar to the Complainant's trade mark LEROY MERLIN. The term 'leroy-merline' is a misspelled version of the Complainant's trade mark, and such behaviour is characteristic of the typosquatting practice, which does not prevent a finding of confusing similarity with the LEROY MERLIN trade mark. Furthermore, the generic Top-Level Domain ('the gTLD') suffix (<.com>) is typically disregarded in the assessment of identity or confusing similarity under paragraph 4(a) of the UDRP Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain name.

Lastly, the Complainant claims that the disputed domain name is a typosquatted version of the LEROY MERLIN trade mark, and that such practice evidences the Respondent's lack of rights of legitimate interest in the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant contends that the trade mark LEROY MERLIN is well-known and distinctive, and that its notoriety has been acknowledged in prior UDRP decisions, namely: WIPO Case No. D2022-2292, Groupe Adeo v Nicolas Malfater; and WIPO Case No. D2016-1451, Groupe Adeo v Peter Garcia, Leroy Merlin.

The Complainant further contends that (i) the misspelling of the trade mark LEROY MERLIN in the disputed domain name string was intentionally designed to be confusingly similar with the Complainant's trade mark; and (ii) given the distinctiveness and reputation of the trade mark LEROY MERLIN, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark LEROY MERLIN.

Use

The Complainant avers that the Respondent has used the disputed domain name to attract Internet users to disrupt the Complainant's business by offering products in direct competition with the Complainant. The Complainant further claims that the Respondent has used the disputed domain name to attract Internet users and monetarily capitalised on that confusion. Therefore, the Complainant seeks a finding of bad faith use under paragraph 4(b)(iii) and paragraph 4(b)(iv) of the UDRP Policy.

The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP Policy).

PROCEDURAL FACTORS

The Respondent has accessed the CAC online platform and viewed the case file but has not filed any submission or made any contact with the CAC Secretariat.

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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant is required to establish for the granting of the relief sought (transfer of the disputed domain name):

> i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
>
> ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
>
> iii. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'LEROY MERLIN' since at least 1992.

The disputed domain name is composed of the terms 'leroy' and 'merline', which are connected by a dash '-'. The Complainant's trade mark LEROY MERLIN is wholly incorporated into the disputed domain name. The adjacent keyboard letter 'e' in the disputed domain name string (more precisely, 'merline' as opposed to 'merlin') is rather immaterial to produce any distinctive character and, in turn, insufficient overall to dispel the textual, auditory, and visual confusion with the trade mark LEROY MERLIN. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since at least 1992;
- The Complainant operates its activities through the – nearly identical – domain name <leroymerline.com>, which was registered in 1996;
- The disputed domain name <leroy-merline.com> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent’s choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP administrative proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iii) and paragraph 4(b)(iv) of the UDRP Policy, which provide as follows:

> (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor'; and
>
> (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.'

As mentioned in the above section 'Identification of Rights', the disputed domain name does not currently resolve to an active website. The Panel has therefore consulted paragraph 3.1.3 (circumstance (iii) above), paragraph 3.1.4 (circumstances (iv) above) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0 to form its view on the use of the disputed domain name under this UDRP Policy ground. In the Panel's assessment, the factors which attach weight to the Complainant's case are as follows: (i) the degree of reputation of the Complainant's trade mark in the DYI industry sector; (ii) the Complainant's trade mark registration and use of an almost identical domain name (<leroymerlin.com>) for 20+ years before the Respondent's registration of the disputed domain name; (iii) the actual confusion between the disputed domain name and the Complainant's trade mark; (iv) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (v) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain name; and (vi) the overall unlikeliness of any good faith use of the disputed domain name. The Panel considers that the Respondent's behaviour would consequently fall within the remit of paragraph 4(b)(iv) of the UDRP Policy.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **leroy-merline.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-01-15

Publish the Decision