Decision for dispute CAC-UDRP-106064

Case number	CAC-UDRP-106064
Time of filing	2023-12-13 08:22:29
Domain names	leroy-merlim.com

Case administrator

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

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Loya Schutz

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 owner of several « LEROY MERLIN » trademarks, including the following:

International trademark LEROY-MERLIN (device) No. 591251, registered on July 15, 1992;

International trademark LEROY MERLIN (device) No. 701781, registered on 14, 1998;

European trademark LEROY MERLIN (word) No. 10843597, registered on December 7, 2012;

European trademark LEROY MERLIN (device) No.11008281, registered on October 2, 2013.

The Complainant is also the owner of numerous domain names comprising the LEROY MERLIN trademark, such as the domain names <leroymerlin.fr> registered on September 12,1996 which is used for the official website of its subsidiary LEROY MERLIN FRANCE; and <leroymerlin.com>, registered on September 13, 1996.

FACTUAL BACKGROUND

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

The Complainant is a French company specializing in the sale of articles covering all sectors of the home, the development of the living environment and DIY (i.e. “do-it-yourself”), both for individuals and professionals.

The pioneering company of GROUPE ADEO is LEROY MERLIN, created in 1923. LEROY MERLIN is the leading DIY retailer in the home improvement and living environment market, with 30,000 employees in France.

The disputed domain name <leroy-merlim.com> was registered on December 6, 2023.

The disputed domain name resolves to an error page.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that:

1. The disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant contends that the disputed domain name is confusingly similar to its trademark "LEROY MERLIN”.

2. The Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant contends that the Respondent is not commonly known by the disputed domain name and that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is not related to the Complainant’s business in any way. The Complainant does not carry out any activity for, nor has any business dealings with, the Respondent.

3. The disputed domain name has been registered and is being used in bad faith

The Complainant contends that owing to the distinctiveness of the Complainant’s trademark and reputation, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the LEROY MERLIN trademark.

The Complainant further contends that the misspelling of the LEROY MERLIN trademark was intentionally designed to be confusingly similar to the Complainant’s trademark, and that this action constitutes a clear case of typosquatting, which is a further indication of bad faith registration and use. Finally, the Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate. In this sense the Complainant quotes previous UDRP decisions affirming that the incorporation of a famous trademark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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

1. A) Confusing similarity

The sole difference between the disputed domain name and the Complainant's trademark is the replacement of the letter "N" with the letter "M".

Thus, the Panel agrees with the Complainant's assertions that slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark and that the present case represents a clear case of typo-squatting.

1. B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

1. C) Registered and Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark.

Thirdly, the disputed domain name appears to be a clear case of typosquatting.

Finally, the Respondent has not responded to nor denied any of the assertions made by the Complainant in this proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Fabrizio Bedarida**

DATE OF PANEL DECISION 2024-01-16

Publish the Decision