Decision for dispute CAC-UDRP-106162

Case number	CAC-UDRP-106162
Time of filing	2024-01-16 09:07:47
Domain names	cointreaugameday.com

Case administrator

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

Complainant

Organization	COINTREAU

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Above.com Domain Privacy

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

International Trade Mark Registration No. 224329 COINTREAU registered since 1959, with a base registration in France.

FACTUAL BACKGROUND

The Complainant was founded in 1849 by Adolphe Cointreau and Edouard-Jean Cointreau. It is now a branch of the REMY COINTREAU group. COINTREAU is known world-wide and has “a longstanding presence across the five continents”. The Complainant asserts it is “the world’s leading premium orange liqueur”.

The Complainant owns a large number of trademarks containing or consisting of COINTREAU, including the above mentioned international registration.

The Complainant also owns the document <cointreau.com>, which it has held since 1995 and it uses for its main website. The Complainant also provided evidence that it has recently used this website to promote the use of COINTREAU “game day” cocktails.

On 5 January 2024 the Registrant registered the disputed domain name. As at the date of the complaint the disputed domain name redirected web users to a parking page which displayed pay-per-click advertisements and the words “Acheter ce domaine” (which translates from French to English as “Buy this domain”).

PARTIES CONTENTIONS

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

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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and

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 is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant asserts it has an international trademark registration (with a base registration in France) consisting of the word COINTREAU. This registration predates the registration date of the disputed domain name by over 60 years.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark ATOMIC.

The next question is whether the disputed domain name is confusingly similar to the ATOMIC trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. And it also places little weight on the “GAMEDAY” element in the domain name, which would be viewed by web users to simply indicate the website is in the nature of promoting

goods for use on the day of a sporting or entertainment event. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the COINTREAU element.

The disputed domain name is therefore confusingly similar to the COINTREAU trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to information provided by the registrar for the disputed domain name is "Above.com Domain Privacy (Domain Privacy)". This name bears no resemblance to "COINTREAU". Further, the website to which the disputed domain name resolves has does not have content which would indicate any right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The Complainant's trade mark is distinctive and very well known internationally. Further, the Complainant has recently used this website to promote the use of COINTREAU “game day” cocktails. In such circumstances it is reasonable to infer that the Respondent registered the strikingly similar disputed domain name with full knowledge of the Complainant's rights the COINTREAU trademark. Such similarity will inevitably confuse web-users. It is further reasonable to infer that the only foreseeable purpose that the Respondent had to register the domain name and direct it to a website was to opportunistically profit from such confusion or assist another person to do so. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 2nd ed. 2019, pp. 432 to 434.

The Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **cointreaugameday.com**: Transferred

PANELLISTS

Name	**Andrew Sykes**

DATE OF PANEL DECISION 2024-02-14

Publish the Decision