Decision for dispute CAC-UDRP-106170

Case number	CAC-UDRP-106170
Time of filing	2024-01-18 09:55:33
Domain names	leroymerlins.shop

Case administrator

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

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	ALY BAKAYOKO

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 owns several trade marks consisting of the name LEROY MERLIN, including the international word mark LEROY MERLIN, registration number 591251, first registered on 15 July 1992 in international classes 1-9, 11, 16, 17, 19-22, 25, 27, 28, 31 and 37; the international word and device mark LEROY MERLIN, registration number 701781, first registered on 14 August 1998 in international classes 1-9, 11, 12, 14, 16-22, 24-28, 31, and 35-42; the European word mark LEROY MERLIN, registration number 10843597, first registered on 27 April 2012 in international classes 1-9, 11, 12, 14, 16-22, 24-28, 31, 35-37, 40-42, and 44; and the European word and device mark LEROY MERLIN, registration number 11008281, first registered on 2 July 2012 in international classes 1-9, 11, 12, 14, 16-22, 24-28, 31, 35-37, 40-42, and 44. The Complainant's trade mark registrations predate the registration of the disputed domain name.

Furthermore, the Complainant also owns domain names which consist of and incorporate the name LEROY MERLIN, including <leroymerlin.fr>, registered on 12 September 1996; and <leroymerlin.com>, registered on 13 September 1996, which are connected to the Complainant's official website through which it informs Internet users and customers about its products and services.

FACTUAL BACKGROUND

The Complainant, Groupe Adeo, is a French company specialising in the sale of articles covering all sectors of the home, the development of the living environment and DIY, both for individuals and professionals. Leroy Merlin was established in 1923 and

forms part of the Complainant’s group of companies. Leroy Merlin is a leading DIY retailer in the home improvement and living environment market, and has 30,000 employees in France.

The disputed domain name <leroymerlins.shop> was registered on 15 January 2024 and resolves to a an inactive page.

PARTIES CONTENTIONS

The Complainant contends that all three elements of the UDRP have been fulfilled and it therefore the requests the transfer of the disputed domain name to the Complainant.

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 trade mark 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

With regard to the first UDRP element, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks LEROY MERLIN. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety, save that the disputed domain name adds the letter “s” to the Complainant’s trade marks. The Panel considers the present case to be a plain case of "typosquatting", i.e., the disputed domain name contains an obvious and intentional misspelling of the Complainant's trade marks, which is not sufficient to alter the overall impression of the designation as being connected to the Complainant’s trade marks. Minor alterations to the Complainant's trade marks do not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered to be confusingly similar to the relevant trade mark (see, for example, CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrreebates.com>; CAC Case No. 101990, JCDECAUX SA v. Emma Purnell <jcdeceux.com>; CAC Case No. 101892, JCDECAUX SA v. Lab-Clean Inc <jcdacaux.com>; WIPO Case No. D2005-0941, Bayerische Motoren Werke AG, Sauber Motorsport AG v. Petaluma Auto Works <bmwsauberf1.com>; WIPO Case No. D2015-1679, LinkedIn Corporation v. Daphne Reynolds <linkedlnjobs.com>; CAC Case No. 103960, SCHNEIDER ELECTRIC SE v. michele Swanson <schnaider-electric.com> (“the obvious misspelling of the Complainant’s trademark SCHNAIDER ELECTRIC instead of SCHNEIDER ELECTRIC is a clear evidence of "typosquatting“); and CAC Case No. 103166, BOURSORAMA SA v. Cloud DNS Ltd <recover-bousorama.link> ("A domain name that contains sufficiently recognizable aspects of the relevant mark and uses a common name, obvious or intentional misspelling of that mark is considered by UDRP panels to be similar to the relevant mark for the purposes of the first element (see paragraph 1.9 WIPO Overview 3.0)")).

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name.

Indeed, the disputed domain name is not being used for any active website but resolves to an inactive page. A lack of content at the disputed domain has in itself been regarded by other panels as supporting a finding that the Respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name <leroymerlins.shop>. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."). Finally, as noted above, the disputed domain name is a typosquatted version of the Complainant's trade mark; the Panel follows the view expressed in other decisions that typosquatting can evidence that a respondent lacks rights and legitimate interests in the domain name (see, for example, Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group < thehackettgroups.com> ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii)."). Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trade marks, and that the Respondent registered the disputed domain name in full knowledge of the Complainant's trade marks. Indeed, if the Respondent had carried out a Google search for the term "Leroy Merlins", the search results would have yielded immediate results related to the Complainant, its website, and its connected business and services. Indeed, it is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade marks (see, for example, WIPO Case No D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). The Panel considers that the disputed domain name was intentionally designed to be confusingly similar with the Complainant's trademark. Previous panels have seen such actions as evidence of bad faith, which is a view the Panel in these proceedings shares (see, for example, Forum Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines <microssoft.com> ("In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii)."). Furthermore, the website related to the disputed domain name is inactive. The Respondent has not demonstrated any activity in respect of the disputed domain name. First, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law under circumstances where that disputed domain name corresponds to the Complainant's trade mark and is similar to the Complainant's genuine domain names currently used by the latter to promote its goods and services. Secondly, numerous other UDRP decisions have taken the view, which this Panel shares, that the passive holding of a domain name with knowledge that the domain name infringes another party's trade mark rights may in itself be regarded as evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2004-0615, Comerica Inc. v. Horoshiy, Inc.). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using 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. **leroymerlins.shop**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht LLM MCIArb**

DATE OF PANEL DECISION 2024-02-18

Publish the Decision