Decision for dispute CAC-UDRP-106420

Case number	CAC-UDRP-106420
Time of filing	2024-04-08 15:17:51
Domain names	leroy-merlin.online

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	gian maicon

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 has provided evidence of ownership of the following trademarks:

- International trademark LEROY-MERLIN n° 591251 registered since 15-07-1992;
- International trademark LEROY MERLIN n° 701781 registered since 14-08-1998;
- European trademark LEROY MERLIN n°10843597 registered since 27-04-2012;
- European trademark LEROY MERLIN n°11008281 registered since 02-07-2012.

FACTUAL BACKGROUND

The Complainant, Groupe Adeo, is French company specializing in the sale of articles covering all sectors of the home, the development of the living environment and DIY, both for individuals and professionals. The Complainant has provided evidence of ownership of the registrations for the marks "LEROY MERLIN".

The disputed domain name was registered on 2024-03-28 and resolved to an active page reproducing the Complainant's trademark. It currently resolves to an error page.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the Complainant’s trademarks LEROY MERLIN and its domain names. The Complainant contends that the marks are entirely reproduced in the disputed domain name.

Per the Complaint, the Respondent is not known by the disputed domain name. The Complainant contends that Respondent is not authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant equally asserts that the Respondent is not commonly known by the disputed domain name and that no fair or non-commercial use of the domain name can be found. On the contrary, the Complainant submits that the disputed domain name is used to disrupt the Complainant’s business.

As regards the bad faith of the Respondent, the disputed domain name includes the distinctive and well-known trademark LEROY MERLIN. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Furthermore, the Complainant argues that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website. Therefore, the Complainant deems that the Respondent has registered and is using the domain name at issue in order to intentionally divert traffic away from the Complainant’s web site. MX records are also configured, suggesting that the domain name may be actively used for phishing purposes.

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

The Complainant, Groupe Adeo, is French company specializing in the sale of articles covering all sectors of the home, the development of the living environment and DIY, both for individuals and professionals. The Complainant has provided evidence of ownership of the registrations for the marks "LEROY MERLIN".

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel finds for the Complainant in that the disputed domain name reproduces the marks of the Complainant in their entirety, with the minor difference of a hyphen between the two terms in the disputed domain name. Such addition does nothing to diminish the likelihood of confusion.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".online", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent's rights or legitimate interests in the disputed domain name:

(i) before any notice to it of the dispute, the respondent's use of, or 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; or

(ii) the respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[…] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The evidence on record does not show that the Respondent was commonly known, as an individual or an organization, by the disputed domain name.

The Panel also accepts, in the absence of a rebuttal from the Respondent, that the Respondent uses the Complainant's trademarks in the disputed domain name without authorization from the Complainant.

Equally, the Panel finds that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name. The fact that the disputed domain name directs to a website impersonating the Complainant without authorization is, in the opinion of the Panel, a clear indicator that the domain name is not used in a legitimate noncommercial or fair manner.

In the Panel's view such commercial use cannot – from the outset – be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

Therefore, the Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the domain names in bad faith:

(i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holders documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on the holder's website or location.

The evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant, and that the Respondent, by registering and using the disputed domain name has intentionally attracted internet users by creating a likelihood of confusion with the Complainant's trademark, thereby disrupting the Complainant’s business.

Given the long-lasting reputation of the Complainant’s company as well as the structure of the disputed domain name itself, the Respondent cannot have ignored the Complainant’s earlier rights, neither can the Respondent have ignored that, when registering the domain name, they would do so in violation of the Complainant’s earlier rights.

The Complainant also provided evidence that the Respondent is using the disputed domain name to lead to a website impersonating the Complainant, reproducing its trademarked logo and offering various home goods for sale. This is indicative of bad faith on the part of the Respondent.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and therefore finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **leroy-merlin.online**: Transferred

PANELLISTS

Name	**Arthur Fouré**

DATE OF PANEL DECISION 2024-05-14

Publish the Decision