Decision for dispute CAC-UDRP-106438

Case number	CAC-UDRP-106438
Time of filing	2024-04-11 13:54:04
Domain names	remymartinsucks.com

Case administrator

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

Complainant

Organization	E. REMY MARTIN & C°

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Paul Cheek

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 first REMY MARTIN mark was registered in France in 1877.

The Complainant is the owner of the following trademarks:

- REMY MARTIN, International registration No. 236184 registered on 1 October 1960 and duly renewed;
- REMY MARTIN, United States registration No. 749501, registered on 14 May 1963, and duly renewed;
- REMY MARTIN, International registration No. 457204 registered on 16 December 1980 and duly renewed;
- REMY MARTIN, International registration No. 508092 registered on 12 January 1986 and duly renewed;
- REMY MARTIN, International registration No. 1021309 registered on 18 September 2009 and duly renewed.

The Complainant is also the owner of various domain names, which resolve to its international websites, among which <remymartin.com>, registered on September 24, 1997.

FACTUAL BACKGROUND

The Complainant is a French company founded in 1724 and is part of the REMY COINTREAU group, which operates in the production and distribution of alcoholic beverages worldwide. The Complainant is specialized in the production of premium quality cognacs.

REMY MARTIN is the brand name of renown cognac, which is declined as REMY MARTIN VSOP, REMY MARTIN XO, REMY MARTIN 1738 ACCORD ROYAL, REMY MARTIN CLUB, REMY MARTIN TERCET and LOUIS XIII DE REMY MARTIN. Today, the REMY MARTIN cognac is very popular worldwide. The Complainant sells 95 % of its cognac production outside France.

The Respondent is an individual apparently located in the United States. The disputed domain name was registered on 4 May 2020 and resolves to a default web page.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

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

More specifically, the Complainant contends that the disputed domain name is confusingly similar to its REMY MARTIN trademark. The disputed domain name incorporates the Complainant's trademark followed by the term "sucks". A domain name consisting of a trademark and a negative or pejorative term is considered confusingly similar to the complainant’s trademark for the purpose of satisfying standing under the first element of the Policy.

Moreover, the Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. The information appearing in the Whois of the disputed domain name is not similar to the disputed domain name. The Respondent has no relationship with the Complainant, and the Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant did not grant a license or authorization to the Respondent to make use of the Complainant’s trademark REMY MARTIN, or apply for the registration of the disputed domain name. The disputed domain name leads to a default web page. Accordingly, the Respondent did not use the disputed domain name, nor made demonstrable preparations to its use.

Lastly, the Complainant maintains that the Respondent registered and is being using the disputed domain name in bad faith. The Complainant asserts that its REMY MARTIN mark is well-known all over the world, where it has been used for many years. Past Panels have also confirmed the reputation of the Complainant and its trademark. Therefore, the Complainant maintains that the Respondent was aware of the existence of the Complainant's mark when it registered the disputed domain name. The disputed domain name reflects the Complainant’s REMY MARTIN mark followed by the term “sucks”. The disputed domain name resolves to a default page. As the disputed domain name does not resolve to a website containing legitimate criticism, the Complainant affirms that the disputed domain name was registered in bad faith.

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

I. Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's REMY MARTIN mark registered well before the registration of the disputed domain name. The disputed domain name incorporates the Complainant's trademark entirely, followed by the term "sucks". The Complainant's trademark REMY MARTIN is clearly recognizable within the disputed domain name and the addition of the term "sucks" cannot prevent a finding of confusing similarity. Pursuant to section 1.13 of the WIPO Jurisprudential Overview 3.0 (the "WIPO Overview 3.0"), a domain name consisting of a trademark and a negative or pejorative term (such as <[trademark]sucks.com>) is considered confusingly similar to the complainant's trademark for the purpose of satisfying standing under the first element.

Accordingly, the Panel is satisfied that the first condition under the Policy has been met.

II. Rights or Legitimate Interests

As also confirmed in the WIPO Overview 3.0, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

According to the available evidence, the Respondent does not appear to be commonly known by the disputed domain name. Moreover, the Respondent has no relation with the Complainant and the Complainant did not authorize the Respondent to make use of its trademark as part of a domain name or in any other manner. The lack of affiliation with the Complainant is also clear from the nature of the disputed domain name, which consists of the Complainant's mark followed by the pejorative term "sucks" (section 2.5.1 of the WIPO Overview 3.0). The Respondent is passively holding the disputed domain name. Therefore, the Respondent does not appear to have used the disputed domain name in connection with a bona fide offering of goods or services. The fact that the disputed domain name incorporates the word "sucks", could have conferred to the Respondent a legitimate interest in the disputed domain name, had the Respondent used the disputed domain name in connection with a noncommercial, genuinely fair, and not misleading or false criticism site (WIPO Overview 3.0, section 2.6.3). However, the Respondent it not using the disputed domain name to exercise a noncommercial free speech; rather, the Respondent is not using the disputed domain name at all.

In light of the foregoing, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. By not filing a Response, the Respondent has failed to provide appropriate and convincible evidence that it owns rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the second requirement under the Policy has been met.

III. Bad Faith

The Complainant maintains that its REMY MARTIN mark is well known. In view of the longstanding presence on the market and the fact that the REMY MARTIN cognac is exported worldwide with success, the Panel is inclined to believe that the Complainant's mark is indeed reputed in its field. Moreover, the reputation of the REMY MARTIN mark has been confirmed by other UDRP panelists. Besides reputation, REMY MARTIN is a highly distinctive mark as it coincides with an uncommon personal name. In light of these circumstances, the Panel is of the opinion that the Respondent cannot have registered the disputed domain name by mere coincidence. Rather, it is clear that the Respondent was well aware of the Complainant and of its mark when it registered the disputed domain name. The registration of a disputed domain name coinciding with a third party's renowned trademark without rights or legitimate interests amounts to registration in bad faith.

As far as use in bad faith is concerned, the Panel notes that the disputed domain name is passively detained. Such passive holding does not prevent a finding of bad faith under the doctrine of passive holding. Factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (section 3.3 of the WIPO Overview 3.0). In the instant case, the Panel notes that the REMY MARTIN trademark is quite distinctive and enjoys reputation in the alcoholic beverage field. Moreover, the Respondent failed to submit a response and to provide evidence of actual or contemplated good-faith use. The Respondent used a proxy registration service, presumably to shield his identity and elude or frustrate enforcement efforts by the Complainant. Lastly, the Panel considers that any good faith use of the disputed domain name is implausible, considering the reputation of the Complainant's mark, the nature of the disputed domain name and the lack of use of the disputed domain name. The disputed domain name consists of the Complainant's trademark followed by the term "sucks", which, at most, could legitimately (and in good faith) be used only in association with a noncommercial, genuinely fair, and not misleading or false criticism site. However, after 4 years from the date of registration of the disputed domain name, the Respondent still holds it passively.

In light of the foregoing, the Panel concludes that also the third and last condition under the Policy has been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **remymartinsucks.com**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2024-05-19

Publish the Decision