Decision for dispute CAC-UDRP-106502

Case number	CAC-UDRP-106502
Time of filing	2024-05-02 09:18:39
Domain names	leroy-merlin.site

Case administrator

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

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Maria Faldin

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 registered owner of many trademark registrations for the terms “LEROY MERLIN” worldwide, e.g.

- International trademark registration no. 591251 registered on 15 July 1992 for goods and services in classes 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 16, 17, 19, 20, 21, 22, 25, 27, 28, 31, 37 and designating amongst others Germany;
- European Union trademark registration no. 010843597 LEROY MERLIN registered on 7 December 2012 for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 31, 35, 36, 37, 40, 41, 42, 44.

FACTUAL BACKGROUND

It results from the Complainant’s undisputed allegations that it is a French company specialized 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 pioneering company of GROUPE ADEO is LEROY MERLIN, created in 1923 with circa 30,000 employees in France.

The Complainant further contends its trademark LEROY MERLIN be distinctive and well-known.

Furthermore, the Complainant owns and uses the domain names <leroymerlin.fr> (registered on 12 September 1996) and

<leroymerlin.com> (registered on 13 September 1996) for its official website.

The disputed domain name <leroy-merlin.site> was registered on 26 April 2024 and currently resolves to an inactive page. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a web shop prominently displaying without authorization the Complainant's trademark and logo and offering goods similar to those offered under the Complainant's registered trademark.

PARTIES CONTENTIONS

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. The Panel finds that the disputed domain name is identical to a trademark in which the Complainants have rights, pursuant to paragraph 4(a)(i) of the Policy.

   It results from the evidence provided, that the Complainant is the registered owner of various trademarks worldwide for the terms "LEROY MERLIN", e.g. International trademark registration no. 591251 LEROY-MERLIN, registered on 15 July 1992 for goods and services in classes 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 16, 17, 19, 20, 21, 22, 25, 27, 28, 31, 37 and designating amongst others Germany.

   The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7).

   Finally, the Top-Level Domain ("TLD") ".site" of the disputed domain name may be disregarded under the first element confusing similarity test. WIPO Overview 3.0 at section 1.11.

2. The Panel further finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

   Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

   In the Panel's view, the Complainant has made a prima facie case that none of these circumstances are found in the case at

hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the Complainant's trademark e.g. by registering the disputed domain name. Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant's LEROY-MERLIN and that the trademark LEROY-MERLIN is not a combination of terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see WIPO Overview 3.0, at section 2.5.1). The Panel shares this view.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

3. Finally, the Panel finds that the Complainant has established that the disputed domain name has been registered and is being used in bad faith, paragraph 4(a)(iii) of the Policy.

The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark LEROY MERLIN is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant's trademark when registering the disputed domain name. This is underlined by the fact that the disputed domain name is identical to the Complainant's trademark. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith, WIPO Overview 3.0 section 3.1.4. The Panel shares this view.

Furthermore, the Panel notes that it results from the Complainant's documented allegations that the disputed domain names resolved to a website prominently displaying without authorization the Complainant's registered trademark and logo allegedly offering products similar to those offered under the Complainant's registered trademark.

For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain names included the Complainant's trademark when it registered the disputed domain name, and that the Respondent 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. **leroy-merlin.site**: Transferred

PANELLISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2024-06-10

Publish the Decision