

Decision for dispute CAC-UDRP-106639

Case number	CAC-UDRP-106639
Time of filing	2024-06-25 08:14:58
Domain names	colruytgroupes.com

Case administrator

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

Complainant

Organization	Colruyt Group NV
--------------	------------------

Complainant representative

Organization	Colruyt Group NV
--------------	------------------

Respondent

Name	Awa Kone
------	----------

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states that it owns "various COLRUYT trademark registrations," including EU Reg. No. 010375434 for COLRUYTGROUP (registered October 13, 2011); and that its "food branch Colruyt Food Retail NV" owns EU Reg. No. 009856733 for COLRUYT (registered October 7, 2011). These registrations are referred to herein as the "COLRUYT Trademark."

FACTUAL BACKGROUND

Complainant states that it "operates one of Belgium's largest supermarket chains under" the COLRUYT Trademark; and that its "history dates back to 1928, when Franz Colruyt started a colonial wholesale goods business to serve grocers in Brussels and the surrounding area."

The Disputed Domain Name was created on March 29, 2024. Complainant states, and provides documentation to support, that Respondent uses the Disputed Domain Name "to impersonate the Colruyt Group" via "exchanges of emails sent by the respondent under cover of... two email addresses," one of which contains the name of the chief operating officer of "the Food Retail department of Colruyt Group."

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the COLRUYT Trademark because it “contains the EU TMs COLRUYT of which the Complainant is the owner” and “‘Groupes’ is the French translation of ‘Groups’ (plural of ‘Group’)”.

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “[t]o the Complainant’s best knowledge, it is the only organization in the world using the names COLRUYT and COLRUYT GROUP in the course of trade”; “Complainant does not grant any licenses or authorization to use the COLRUYT mark to third parties outside its group of companies”; Respondent “is not engaged in any legitimate business which would require using the COLRUYT trademarks” and “[i]nstead, the Disputed Domain Name is merely used as an attempt to impersonate the Complainant for malicious purposes” as shown by emails using the Disputed Domain Name.

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, “[e]mails have been sent by the respondent using the e-mail addresses, ‘[redacted]@colruytgroupes.com’ and ‘[redacted]@colruytgroupes.com’... in an attempt to impersonate the COO of the Food Retail department of the Complainant, who is one of the leading figures in the company”; and “[t]he purpose of the email was indeed to obtain business information and/or procure goods from a supplier of the Complainant or the Complainant’s affiliate.”

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the COLRUYT Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the COLRUYT Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “colruytgroupes”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains EU Reg. No. 010375434 in its entirety, simply adding the letters “es” at the end, to make the French word “group” plural. As set forth in section 1.8 of WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or

otherwise) would not prevent a finding of confusing similarity under the first element.” And, as set forth in section 1.9 of WIPO Overview 3.0, “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark.... Examples of such typos include... the addition or interspersing of other terms or numbers.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “[t]o the Complainant’s best knowledge, it is the only organization in the world using the names COLRUYT and COLRUYT GROUP in the course of trade”; “Complainant does not grant any licenses or authorization to use the COLRUYT mark to third parties outside its group of companies”; Respondent “is not engaged in any legitimate business which would require using the COLRUYT trademarks” and “[i]nstead, the Disputed Domain Name is merely used as an attempt to impersonate the Complainant for malicious purposes” as shown by emails using the Disputed Domain Name.

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 Panel finds that Complainant has established its prima facie case and, without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant 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 registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’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 the registrant’s website or location or of a product or service on the registrant’s website or location.

As stated in the Complaint and as shown in supporting annexes, the Disputed Domain Name has been used to impersonate Complainant via apparent phishing activities. Section 3.1.4 of WIPO Overview 3.0 makes clear that phishing “is manifestly considered evidence of bad faith.”

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **colruytgroupes.com**: Transferred

PANELLISTS

Name	Douglas Isenberg
------	------------------

DATE OF PANEL DECISION 2024-07-19

Publish the Decision
