Decision for dispute CAC-UDRP-107006

Case number	CAC-UDRP-107006
Time of filing	2024-10-29 13:06:54
Domain names	leroymerlinfrance.com

Case administrator

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

Complainant

Organization	GROUPE ADEO

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	flavio rodrigues

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 owner of several trademarks « LEROY MERLIN », such as:

- The international trademark LEROY-MERLIN n° 591251 registered since July 15, 1992;
- The international trademark LEROY MERLIN n° 701781 registered since August 14, 1998;
- The European trademark LEROY MERLIN n°10843597 registered since April 27, 2012;
- The European trademark LEROY MERLIN n°11008281 registered since July 2, 2012.

FACTUAL BACKGROUND

GROUPE ADEO (the "Complainant") is a 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 pioneering company of GROUPE ADEO is LEROY MERLIN, created in 1923. LEROY MERLIN is the leading DIY retailer in the home improvement and living environment market, with 30,000 employees in France

The disputed domain name <leroymerlinfrance.com> was registered on September 24, 2024 and redirects to a website displaying the Complainant's trademark and offering competing goods at discounted prices.

PARTIES CONTENTIONS

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

The addition of the geographical term "FRANCE" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark LEROY MERLIN. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Furthermore, the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain name associated. Indeed, as reminded in the WIPO Overview 3.0 §1.11.1, "the applicable Top Level Domain ("TDL") 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 confusion similarity test".

Finally, past panels have confirmed the Complainant's rights over the terms "LEROY MERLIN".

Please see for instance:

- WIPO Case No. D2022-3778, Groupe Adeo v. Privacy service provided by Withheld for Privacy ehf / Huseyin Cemal COBAN, CiksNET, <leroymerlin.xyz>;
- WIPO Case No. D2022-3088, Groupe Adeo v. Jean Phillipe <leroymerlin-france.com>.

Consequently, the disputed domain name is confusingly similar to Complainant's trademark LEROY MERLIN.

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).

According to WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Respondent is not identified in the Whois database as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name. Please see for instance 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 paragraph 4(c)(ii).

The Respondent has no rights or legitimate interests in respect of the domain name <leroymerlinfrance.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark LEROY MERLIN, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name redirects to a website displaying the trademark LEROY MERLIN and offering competing goods at discounted prices. The disputed domain name is used to host a website to impersonate the Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the website originate from Complainant. Impersonation of a complainant, by using its trademark in a disputed domain name and seeking to defraud or confuse users, indicates a lack of rights or legitimate interests by a Respondent. Please see Forum Case n° 2001717, Comme Des Garcons, Ltd. and Comme Des Garcons Co., Ltd. v. Lina543 Valen354345cia ("The disputed domain name incorporates Complainant's registered

mark without authorization, and it is being used for a misleading website that passes off as Complainant to promote counterfeit versions of its products and possibly for other fraudulent conduct. Such use does not give rise to rights or legitimate interests under the Policy.").

Thus, in accordance with the foregoing, the Respondent has no right or legitimate interest in respect of the disputed domain name <leroymerlinfrance.com>.

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).

Earlier UDRP decisions have acknowledged the Complainant's trademark's reputation. Please see for instance WIPO Case No. D2022-2292, Groupe Adeo v. Nicolas Malfate; WIPO Case No. D2016-1451, Groupe Adeo v. Peter Garcia, Leroy Merlin.

Furthermore, the disputed domain name points to an online store displaying the Complainant's trademark and logo and selling competing goods at discounted prices.

Consequently, given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name points to an online store displaying the Complainant's trademark and logo and selling competing goods at discounted prices.

The Respondent registered and uses the domain name in bad faith to create confusion with Complainant's trademarks for commercial gain by using the identical domain name to resolve to a website offering goods in direct competition with the Complainant's products. Using a confusingly similar domain name to trade upon the goodwill of a complainant can evince bad faith under Policy paragraph4(b)(iv).

Please see for instance:

- Forum Case No. 1612750, Xylem Inc. and Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi, ("The Panel agrees that Respondent's use of the website to display products similar to Complainant's, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy ¶ 4(b)(iv).");
- Forum Case No. FA 1760517, (finding bad faith per Policy ¶ 4(b)(iv) where "Respondent registered and Bittrex, Inc. v. Wuxi Yilian LLC uses the <lbittrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website in order to confuse users into believing that Respondent is Complainant or is otherwise affiliated or associated with Complainant.").

Based on the above, the Complainant contends that Respondent acquired the disputed domain name with the only intention to attract for commercial gain internet users to the Respondent's website.

On those facts, the Complainant contends that Respondent has registered the disputed domain name <leroymerlinfrance.com> and is using it in bad faith.

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

The Respondent is not identified in the Whois database as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name.

Furthermore, the disputed domain name redirects to a website displaying the trademark LEROY MERLIN and offering competing goods at discounted prices. The disputed domain name is used to host a website to impersonate the Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the website originate from Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **leroymerlinfrance.com**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision