

Decision for dispute CAC-UDRP-100350

Case number	CAC-UDRP-100350
Time of filing	2011-12-20 12:10:21
Domain names	ruedescommerces.net

Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	RueDuCommerce
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Complainant representative

Organization	CHAIN AVOCATS
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Respondent

Name	Nicolas Jourdain Ruedescommerces
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OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

RueDuCommerce Company (“the Complainant”) uses the domain names “www.rueducommerce.com” and “www.rueducommerce.fr”.

The Complainant is the owner of the following trademarks :

- “ WWW.RUE DU COMMERCE.COM ”
French trademark registration No. 3374566
For goods and services class 9, 16, 28, 35, 38, 41 and 42
Registration date: July 29, 2005
- “ RUE DU COMMERCE ”
French trademark registration No. 3036950
For goods and services class 9, 16, 28, 35, 38, 41 and 42
Registration date: June 27, 2000

- “ RUE DU COMMERCE.COM “

CTM Registration No. 8299381

For goods and services class 16, 35, 36, 37, 38, 41 and 42

Registration date: May 14, 2009

- “ RUE DU COMMERCE “

CTM Registration No. 8299356

For goods and services class 9, 16, 35, 36, 37, 38, 41 and 42

Registration date: May 14, 2009

FACTUAL BACKGROUND

The Complainant is a Company with its legal seat in SAINT OUEN, France.

The Complainant acts on on-line sales and has become well known among French internet users and consumers. It is now a major e-merchant in France whose honorability and reliability are recognized by the internet users.

The Complainant uses the domain names “www.rueducommerce.com” and “www.rueducommerce.fr” and its trademarks RUE DU COMMERCE.COM and RUE DU COMMERCE for its internet-order selling business activities.

The Respondent registered the domain name “www.ruedescommerces.net” (hereafter “the Domain Name”) on February 19, 2011.

By February 22, 2011, the Complainant notified the Respondent, by postal registered letters, e-mails and facsimile, that the registration of the Domain Name “www.ruedescommerces.net” is infringing its own rights. But those letters, emails and facsimile remained unanswered and have not even been receipted or claimed. Despite several more attempts to contact the owner of the disputed Domain Name, by sending letters, emails and facsimile not only to him, but also to the Registrant of the disputed Domain Name and the administrative contact, the owner of the Domain Name could not be contacted.

Pursuant to the Rules, the Czech Arbitration Court (hereafter CAC) notified the Respondent that an administrative proceeding had commenced against it, but again no response was received.

The Complainant asserts the registration by the Respondent of the Domain Name “www.ruedescommerces.net” infringes its rights and prejudicially affects it.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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) The disputed Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights

With regard to criterion (i), there can be no doubt that “ruedescommerces” is close in spelling to the Complainant’s trademarks and domain names composed of “ruedcommerce”. The disputed Domain Name contains an expression confusingly similar to Complainant’s trademarks, composed of the three same joined words : the name “rue”, the definite article “du” or “des” and the name “commerce(s)”. The only difference lies on the fact that the second part in the expression is in singular, in Complainant’s domain names and trademarks, and in plural, in the disputed Domain Name. This difference is too insignificant to avoid any risk of confusion among internet users.

Besides, the Panel notices the Respondent registered the disputed Domain Name with the extension “.net”, whereas the Complainant’s domain names are registered with the extensions “.com” and “.fr”. However the Panel reminds also this kind of difference concerning extensions of domain names is not sufficient to alter the similarity between several domain names (see Decision No. 100325).

It is obvious that internet users, when searching for “ruedcommerce” could easily make a mistake and type “ruedescommerces”, and thus be directed to a site they did not expect to visit. This case is a form of typosquatting, and it is clear that the disputed Domain Name is likely to cause confusion among internet users.

As a conclusion, the Panel has no doubt that the disputed Domain Name is confusingly similar to Ruedcommerce’s trademarks and service marks.

(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name

With regard to criterion (ii), the Complainant contends the disputed Domain Name “ruedescommerces.net” is not currently used for an active website and is passively held by the Respondent.

The Panel notes that there is no use of, or demonstrable preparations to use, the disputed Domain Name or a name corresponding to the domain name in connection with a bona fide offering of goods and services.

Besides, the Respondent is not commonly known under these names.

The Respondent is not making any legitimate and non commercial or fair use of the disputed Domain Name neither.

Further, the Respondent is not licensed or authorized by the Complainant to use the trademarks “Rue Du Commerce” and “Rue Du Commerce.com”.

Without any response from the Respondent, or any other information indicating the contrary, and in accordance with Paragraph 4(c) of the Rules, the Panel concludes that the Respondent has no rights or legitimate interests in respect of “ruedescommerces.net”.

(iii) The disputed Domain Name has been registered and is being used in bad faith

The Panel’s view is that Respondent registered the disputed Domain Name either with the aim of preventing the Complainant from reflecting the mark in a corresponding domain name or to get benefit from typo mistakes (typosquatting).

This assertion is based on the following facts:

- The disputed Domain Name is inactive and not being used
- The registrant is anonymous and does not respond to warnings
- The Registrant was certainly aware of the successful site of Complainant when he registered the domain name

Pursuant to Paragraph 4(b) of the Rules, "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 a domain name in bad faith:

[...]

(ii) [The Respondent 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 Respondent has engaged in a pattern of such conduct;"

First, the Panel notes the lack of any response from the Respondent not only to the letters, emails and facsimile sent by the Complainant prior this proceeding, but also to the notification of this proceeding by the CAC.

Pursuant to Paragraph 14(b) of the Rules, "if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate".

Based on all the elements furnished by the Complainant and on Paragraph 14(b) of the Rules mentioned above, the Panel considers the lack of response from the Respondent shall at least question the Respondent's good faith when registering and using the disputed Domain Name.

Further, there is no doubt that the Respondent knew the Complainant and its marks, when registering the disputed Domain Name. The Complainant has reached a leading position in on-line sales in France for more than eleven years and is now recognized as a major e-merchant among French internet users and consumers, especially through its trademarks and domain names.

It is thus not conceivable that the Respondent chose the disputed Domain Name by chance, without referring to the Complainant's trademarks and domain names.

It is clear that the Respondent's purpose when registering the disputed Domain Name was, in one way or another, to benefit from the well established position of the Complainant on the sector of online sales. The Respondent's e-mail address, furnished by the administrative contact contacted by the Complainant prior this proceeding, "vend-tout-37@hotmail.fr", reveals that the Respondent would aim at intervening on the same sector as the Complainant. In the present case, the Respondent's purpose may have been at least to disturb the Complainant's activity, diverting its traffic.

Considering all these facts, the Respondent showed bad faith when registering the disputed Domain Name.

Moreover, the Panel notices that the disputed Domain Name is not in connection with any active website. It can be deduced from the annexes brought by the Complainant that the disputed Domain Name has always been linked to a non operated website. As a consequence, there is no sign that the disputed Domain Name is and has ever been in connection with a bona fide offering of goods or services.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. RUEDESCOMMERCES.NET: Transferred

PANELLISTS

Name	Mr. Etienne Wéry
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DATE OF PANEL DECISION 2012-01-20

Publish the Decision