

ADMINISTRATIVE PANEL DECISION

Groupe Adeo v. gg gg, gg
Case No. D2024-0284

1. The Parties

The Complainant is Groupe Adeo, France, represented by Nameshield, France.

The Respondent is gg gg, gg, United States of America.

2. The Domain Name and Registrar

The disputed domain name <leroyermerlin-nantes.com> is registered with Squarespace Domains II LLC (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 23, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2024, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 29, 2024.

On January 29, 2024, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On the same date, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint in both French and English, and the proceedings commenced on February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 5, 2024.

The Center appointed Mireille Buydens as the sole panelist in this matter on March 15, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French and worldwide retail group, devoted to the operation of DIY stores under the name Leroy Merlin. Leroy Merlin is the pioneering company of the Complainant's group, created in 1923, and a leader in the home improvement market in France, with 30,000 employees in France and 144 stores.

The Complainant is the owner of numerous trademarks for or incorporating LEROY MERLIN ("the Trademark"), including:

- European Union word Trademark LEROY MERLIN No. 10843597, registered on December 7, 2012, in international 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 and 44;
- International word Trademark LEROY-MERLIN No. 591251, registered on July 15, 1992, in international classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 16, 17, 19, 20, 21, 22, 25, 27, 28, 31 and 37, and designating Algeria, Austria, Benelux, Bulgaria, Croatia, China, Czech Republic, Egypt, Germany, Hungary, Italy, Liechtenstein, Monaco, Montenegro, Morocco, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, Türkiye, Ukraine, Viet Nam,;
- International Trademark LEROY MERLIN (figurative) No. 701781 registered on August 14, 1998 in international classes 1 to 9, 11, 12, 14, 16 to 22, 24 to 28, 31, 35 to 42, and designating Benelux, China, Italy, Poland, Portugal, Spain, Switzerland, Russian Federation and Ukraine.

The Complainant is also the owner of numerous domain names comprising the Trademark, such as the domain name <leroymerlin.fr> registered since September 12, 1996 and used for the official website of its subsidiary Leroy Merlin France.

The disputed domain name was registered on January 17, 2024. According to the Complaint, the disputed domain name redirected to a website reproducing the official website at "www.amendes.gouv.fr" of the French public entity Direction générale des Finances publiques (DGFIP) for the payment of fines. MX servers are configured.

The disputed domain name currently resolves to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

First, the Complainant contends that it owns prior rights in the Trademark, which has been registered many years before the registration of the disputed domain name. The disputed domain name entirely incorporates the Complainant's Trademark with the mere addition of the term "nantes". The addition of the term "nantes" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Trademark. On the contrary, the addition of the term "nantes" reinforces the risk of confusion as it may be perceived as referring to the Complainant's subsidiary located in Nantes. The Complainant further contends that the addition of the generic Top-Level Domain ("gTLD") ".com" should be disregarded.

Second, the Complainant asserts 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 Respondent is not affiliated with nor authorized by the Complainant in any way. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's Trademark, or apply for registration of the disputed domain name. The Complainant also submits that the disputed domain name redirected to a website mimicking a French official website for the payment of fines, which excludes any use in the framework of a bona fide offering of goods or services.

Third, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant submits that, in light of the fact that the Trademark is well known and used since many years, it is inconceivable that the Respondent was unaware of the existence of the Complainant or the Complainant's Trademark when it registered the disputed domain name. The Complainant further submits that the disputed domain name resolved to a website copying an official French website for the collection of fines. By using the disputed domain name, which is confusingly similar to the Complainant's well-known Trademark, for such a website, the Respondent has tried to attract and confuse Internet users in order to collect personal information from the Complainant's customers. Finally, the Complainant asserts that MX servers are configured which suggests that the disputed domain name may be actively used for email purposes (phishing).

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Respondent is located in the United States, which implies that he understands and writes in English.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

In the case at hand, the registration agreement for the disputed domain name is in French. However, it appears that the Respondent is located in the United States, which creates a presumption that he can read and understand English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here the term "nantes" preceded by a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD ".com" is a standard registration requirement and does not prevent the disputed domain name from being confusingly similar to the Trademark. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of

proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use or demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the disputed domain name, either. The fact that the disputed domain name redirected to a website copying the official French website for the payment of official fines confirms that the Respondent was not intending to use the disputed domain name in the framework of a bona fide offering of goods or services.

The composition of the disputed domain name, which only differs from the Trademark by the addition of the term "nantes" (where the Complainant is active), along with the gTLD ".com", itself carries a risk of implied affiliation and affirms the Respondent's intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant's Trademark. A respondent's use of a complainant's mark to redirect users would not support a claim to rights or legitimate interests.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the disputed domain name is confusingly similar to the Complainant's Trademark, which predates the registration of the disputed domain name by many years and is a well-known trademark. The disputed domain name reproduces the Trademark with the single addition of the geographical term "nantes" (which is a place in France where the Complainant is active and runs a shop). This addition will be understood by Internet users as the official domain name of the Complainant's subsidiary located in Nantes. As a result, the Respondent was more likely than not aware of the Complainant's earlier rights at the time of the registration of the disputed domain name ([WIPO Overview 3.0](#) section 3.2.2).

If circumstances indicate that the respondent's intent in registering the disputed domain name was to profit from the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include inter alia: (i) the respondent's likely knowledge of the complainant's rights and (ii) the distinctiveness of the complainant's mark. WIPO Overview, section 3.1.1. In the case at hand, it has been pointed out that the Respondent knew or should have known the Complainant's well-known Trademark. The fact that the Respondent decided to add, in the disputed domain name, the name of the city of Nantes, where Complainant is active and has a shop, to the Complainant's Trademark, shows that the Respondent was aware of the Complainant's existence when registering the disputed domain name. These circumstances, taken together, indicate the Respondent's bad faith in registering the disputed domain name.

The Panel also notes that the Respondent initially used the disputed domain name for redirecting Internet users to a website reproducing an official French website for the payment of fines and activated MX records, which could have led to phishing attempts. It is not unlikely that the Respondent tried, by the registration and use of the disputed domain name, to attract Internet users (who would believe that the disputed domain name belongs to the Complainant or its affiliate in Nantes) and would then be confused and enter their personal information (which could be used for phishing by the Respondent). It is also worth noting that the Respondent failed to present any rationale for registering and using the disputed domain name. The disputed domain name reproduces the entirety of the Complainant's trademark and is likely to unduly profit from the value of the Complainant's trademark.

At the date of this Decision, it appears that the disputed domain name resolves to an error page and is passively held. Panels have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, 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, and (iii) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's Trademark, the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <leroymerlin-nantes.com> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: March 22, 2024