

ADMINISTRATIVE PANEL DECISION

E. Remy Martin & C° v. 雷凯 (Kai Lei)

Case No. D2022-2843

1. The Parties

The Complainant is E. Remy Martin & C°, France, represented by Nameshield, France.

The Respondent is 雷凯 (Kai Lei), China.

2. The Domain Name and Registrar

The disputed domain name <louisxiii.cloud> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 5, 2022, 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 in English on August 8, 2022.

On August 5, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 8, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in Chinese and English of the Complaint, and the proceeding commenced on August 11, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was August 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 1, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on September 16, 2022. 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

A. Complainant

The Complainant is a company headquartered in France and founded in 1724 and is part of the Remy Martin group of companies. The Complainant is the producer of premium quality cognacs marketed and sold worldwide.

The Complainant is the owner of numerous trade mark registrations in jurisdictions worldwide, including International registration No. 629,594, registered on January 4, 1995, for LOUIS XIII DE REMY MARTIN, designating several countries including China (the "Trade Mark").

The Complainant promotes its products via its website at "www.louisxiii-cognac.com".

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on June 30, 2022.

D. Use of the Disputed Domain Name

The disputed domain name was previously resolved to a website mainly in Chinese with some English words (the "Website") (i) containing images of the Complainant's cognacs; (ii) offering the Complainant's cognacs for resale; and (iii) with the following copyright notice:

"Copyright © 2021 雷米·马丁集团 All Rights Reserved."¹

As at the date of this Decision, the disputed domain name is no longer resolved to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

¹ Translation: "Copyright © 2021 Remy Martin Group. All Rights Reserved."

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to an undue burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for the following reasons:

- (i) the language most widely used in international relations and one of the working languages of the Center is English;
- (ii) the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script; and
- (iii) the use of Chinese would require the Complainant to retain specialized translation services at a cost very likely to be higher than the overall cost of the proceeding and would therefore impose an undue burden on the Complainant.

The Respondent did not file a response and did not file 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 3.0](#), section 4.5.1).

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Website contains some English words; that the Respondent has taken no part in this proceeding; that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel, therefore, finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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 Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the Top-Level Domain (“TLD”) “.cloud”, the disputed domain name incorporates a dominant element of the Trade Mark.

Further, the content of the Website to which the disputed domain name formerly resolved confirms the confusing similarity as the Respondent clearly seeks to target the Complainant’s Trade Mark (see [WIPO Overview 3.0](#), section 1.15).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent has previously used the disputed domain name in respect of the Website, in order to pass off the Website as a website of the Complainant, or otherwise authorised by the Complainant, for resale of the Complainant’s cognac products under the Trade Mark, including in particular by use of the false and misleading copyright notice, claiming that the Website is operated by the Remy Martin Group.

Furthermore, the Respondent’s current passive holding of the disputed domain name underscores his lack of rights or legitimate interests in the disputed domain name.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In light of the above factors, the Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the manner of use of the disputed domain name, the Panel finds that the requisite element of bad faith has been made out under paragraph 4(b)(iv) of the Policy. The Respondent's act of taking down the Website at some stage following the filing of the Complaint provides further support for a finding of bad faith.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

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 <louisxiii.cloud> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 27, 2022