

ADMINISTRATIVE PANEL DECISION

E. Remy Martin & C° v. Lei lier

Case No. D2023-1490

1. The Parties

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

The Respondent is Lei lier, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <remymartin-club.com> (the "Domain Name") is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 5, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023, 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 April 6, 2023. The Center sent another email communication to the Complainant on April 18, 2023 requesting clarification about a discrepancy in the Complaint. The Complainant filed a second amended Complaint on April 18, 2023.

The Center verified that the Complaint together with the amended Complaints 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, and the proceedings commenced on April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 11, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on May 23, 2023. 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 company, founded in 1724, engaged in producing and distributing alcoholic beverages, in particular premium quality cognacs, worldwide. The Complainant's cognacs are often distributed under the trademark REMY MARTIN (the "REMY MARTIN Mark"), including REMY MARTIN VSOP, REMY MARTIN XO and REMY MARTIN CLUB. The Complainant promotes its products through various means including from its website at "www.remymartin.com" ("Complainant's Website").

The Complainant has held a trademark registration for the REMY MARTIN Mark in various jurisdictions since 1960, notably having held a United States trademark registration since May 14, 1963 for cognac (registration No. 749501).

The Domain Name was registered on March 28, 2023. The Domain Name is presently inactive but prior to the commencement of the proceeding the Domain Name resolved to a website (the "Respondent's Website") that prominently reproduced the REMY MARTIN Mark and images of the Complainant's products copied from the Complainant's Website. The Respondent's Website invites visitors to "log in to your account" and download an app, both of which could be used to allow the Respondent to access personal details of visitors or distribute malware.

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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the REMY MARTIN Mark, having registered the REMY MARTIN Mark in the United States. The Domain Name is confusingly similar to the REMY MARTIN Mark as it reproduces the word mark REMY MARTIN in its entirety and adds the descriptive term "-club".
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the REMY MARTIN Mark. The Respondent is not commonly known by the REMY MARTIN Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent's Website for commercial gain and to potentially steal their passwords and other information. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "-club", 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 Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage reproducing the Complainant's REMY MARTIN Mark and copyrighted material, purporting to allow visitors to "log in" to their account or download an app does not amount to use for a *bona fide* offering of goods and services. Rather, it appears that the purpose behind the Respondent's Website is to encourage visitors, under the impression that they are dealing with the Complainant, to provide their personal details, such as passwords, to the Respondent to enable the Respondent to commit some sort of fraud. Such conduct is phishing, which is not a *bona fide* offering of goods or services.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the REMY MARTIN Mark at the time the Respondent registered the Domain Name. The Respondent's Website prominently reproduces the REMY MARTIN Mark and reproduces material from Complainant's Website.

The Respondent's Website purports to invite visitors, under the impression that they are dealing with an official website of the Complainant, the opportunity to provide password information or download an app. However, what apparently occurs is that the Respondent seeks to use the Respondent's Website to steal the personal information of visitors misled into visiting the Respondent's Website for the purposes of committing fraud or distributing malware to them. Such conduct is deceptive, illegal, and in previous UDRP decisions has been found to be evidence of registration and use in bad faith, see *FIL Limited v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Mark Steven*, WIPO Case No. [D2021-3284](#).

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Domain Name <remymartin-club.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: June 2, 2023