

ADMINISTRATIVE PANEL DECISION

Groupe Adeo v. qin xian sheng
Case No. D2022-0881

1. The Parties

The Complainant is Groupe Adeo, France, represented by Coblenche Avocats , France.

The Respondent is qin xian sheng, Singapore.

2. The Domain Name and Registrar

The disputed domain name <leroymelin.com> (the “Disputed Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 15, 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 March 25, 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 amendment to the Complaint on March 28, 2022.

The Center verified that the Complaint together with the amendment to the 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, and the proceedings commenced on April 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 27, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on May 6, 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

The Complainant is a French group company. Through its subsidiary, LEROY MERLIN, a DIY retail chain with 464 stores in 13 countries worldwide employing 88,000 employees, the Complainant has been using the LEROY MERLIN mark since 1923. The Complainant also owns more than 170 domain names beginning with “leroy-merlin” or “leroymerlin”, and operates the website to which the domain <leroymerlin.com> resolves (the “Complainant’s Website”).

The Complainant also owns a number of trademark registrations for the LEROY MERLIN mark, including, *inter alia*, European Union (“EU”) Trademark Registration Number 10843597 for LEROY MERLIN registered on April 27, 2012, International Trademark Registration Number 591251 for LEROY MERLIN registered on July 15, 1992, designating Austria, Bulgaria, Benelux, Switzerland, China, Czech Republic, Germany, Egypt, Spain, Hungary, Italy, Liechtenstein, Morocco, Monaco, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, San Marino, Vietnam, and Ukraine; and EU Trademark Registration Number 11008281 for



LEROY MERLIN (device), registered on July 2, 2012 (the “Complainant’s Trademark”). Thus, the Complainant has obtained an exclusive right to the Complainant’s Trademark through extensive use.

The Disputed Domain Name was registered by the Respondent on June 13, 2021. The Disputed Domain Name resolves, through redirection, to a 3rd party website with pay-per-click links.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarised as follows:

(a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark by virtue of it being an intentional misspelling of the mark. The only element which differentiates the Disputed Domain Name from the Complainant’s Trademark is the removal of the “r” in LEROY MERLIN to read <leroymerlin.com>. The Respondent is typo-squatting by intentionally misspelling the Complainant’s Trademark.

(b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Name. The Complainant has never authorized or given permission to the Respondent, who is not associated with the Complainant in any way, to use the Complainant’s Trademark or to register the Disputed Domain Name. There is also no evidence of 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, nor a legitimate noncommercial or fair use of the Disputed Domain Name.

(c) The Respondent’s registration of the Disputed Domain Name which is confusingly similar to the Complainant’s Trademark is in itself an act of bad faith by someone with no legal connection to the Complainant’s business. The Disputed Domain Name also resolves, through redirection, to a rotating set of third-party websites unaffiliated with the Complainant, that provides for pay-per-click links in order to generate revenue in respect of “click-through” traffic. Such online traffic has been generated by creating an impression of an association between the Disputed Domain Name and the Complainant’s Trademark. Therefore, given these factors, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the generic Top-Level Domain ("gTLD") extension, ".com" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety save for the removal of the letter "r" in "merlin". UDRP panels have consistently found that the intentional misspelling of a trademark will not alter the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the mere removal of the letter "r" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie case* in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the burden of production shifts to the respondent demonstrate that it has rights to or legitimate interests in the domain name (with the ultimate burden of proof always resting on the complainant). Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorised the Respondent to use the Complainant's Trademark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, and moreover noting the fact of a typo of a known mark, the Panel is of the view that a *prima facie case* has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favour of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such

default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights to or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (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 was in connection with a *bona fide* offering of goods or services;
- (ii) the Respondent has been commonly known by the Disputed Domain Name, even if it 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.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name was in connection with a *bona fide* offering of goods or services. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use as the Respondent appears to have registered the Disputed Domain Name solely for the purpose of misleadingly diverting consumers into thinking that the Respondent is, in some way or another, connected to, or affiliated with the Complainant and its business, or that the Respondent's activities are approved or endorsed by the Complainant. Moreover, as stated in section 2.9 of the [WIPO Overview 3.0](#), the pay-per-click links at issue do not represent a *bona fide* offering since such links compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users.

In addition, no evidence has been provided to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has been commonly known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be fairly well known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "Leroy Merlin" are the Complainant's Website and third party websites providing information relating to the Complainant's Website. Therefore, taking this into consideration together with the fact that the Disputed Domain Name is an intentional misspelling of the Complainant's Trademark and that the website to which the Disputed Domain Name resolves includes pay-per-click links capitalizing on the Complainant's Trademark, the Respondent must have been aware of the Complainant and the Complainant's Trademark rights when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

(i) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use by it of the Disputed Domain Name; and

(ii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name contains an intentional misspelling of the Complainant's Trademark. The Respondent is using the Disputed Domain Name to earn click-through revenue from the misdirection of Internet users to its website caused by the confusing similarity of the Disputed Domain Name to the Complainant's Trademark. As discussed in Section 6.B. above, the Respondent lacks rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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, <leroymelin.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: May 20, 2022