

ADMINISTRATIVE PANEL DECISION

Groupe Adeo v. Lucas Goncalves

Case No. D2023-1705

1. The Parties

Complainant is Groupe Adeo, France, represented by Coblenz Avocats, France.

Respondent is Lucas Goncalves, Brazil.

2. The Domain Name and Registrar

The disputed domain name <leroymerllin.com> (the “Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 21, 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 Complainant on April 24, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 25, 2023.

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 Respondent of the Complaint, and the proceedings commenced on May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 5, 2023.

The Center appointed Dinant T. L. Oosterbaan as the sole panelist in this matter on June 11, 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

According to the information provided in the Complaint, Complainant is a company specialized in hardware shops. The pioneer company in the group of Complainant is LeRoy Merlin, created in 1923; it is a leading retail outlet in the home and lifestyle improvement market with 21,000 employees in France and 400 stores located all over the world, notably in France, Portugal, Brazil, Spain, and Poland.

According to the evidence submitted, Complainant owns numerous registrations for the trademark LEROY MERLIN, including European Union Trademark No. 010843597, registration date December 7, 2012.

In addition, Complainant owns a portfolio of domain names, each of which incorporates the trademark LEROY MERLIN.

The Domain Name was registered on March 2, 2023. The Domain Name does not resolve to an active website.

The trademark registrations of Complainant were issued prior to the registration of the Domain Name.

5. Parties' Contentions

A. Complainant

Complainant asserts that there is a confusing similarity between its prior trademarks LEROY MERLIN and the Domain Name. According to Complainant, the Domain Name is composed of a similar reproduction of Complainant's trademarks. In addition, the Domain Name differs from Complainant's trademarks only by the repetition of a single letter "l" in the Domain Name. Respondent's registration of the Domain Name consists of a common mistyping of Complainant's trademarks and appears to be deliberate, a practice known as "typosquatting".

According to Complainant, Respondent has no rights nor any legitimate interest in the Domain Name. Respondent is in no way affiliated with Complainant and has not been authorized by Complainant to use its LEROY MERLIN trademarks or to proceed with the registration of the Domain Name including Complainant's prior trademarks. Respondent is neither a licensee of Complainant nor a third party authorized to use the trademarks, including as a Domain Name. Complainant does not know Respondent and has never had any relationship with it. Complainant submits that the reproduction of Complainant's well-known trademarks LEROY MERLIN reveals a malicious intent to take advantage of the notoriety of the said trademarks. In addition, such use has never been authorized by Complainant and therefore cannot be the basis for a *bona fide* use of the Domain Name. Nor does Respondent make a legitimate or fair noncommercial use of it insofar as it manifestly and deliberately creates confusion in the public mind.

Complainant asserts that Respondent has registered and is using the Domain Name in bad faith. Complainant is the owner of numerous trademarks and domain names composed of LEROY MERLIN. It has therefore amply demonstrated the existence of its rights but also its worldwide reputation attached to the LEROY MERLIN trademarks. Respondent could not have been unaware of Complainant's prior rights when it registered the Domain Name.

The Domain Name currently redirects to an inactive website. Complainant submits that it is commonly accepted that the passive holding of a domain name is evidence of bad faith where such conduct is intended only to attract users to the respondent's unused website, in order to create a likelihood of confusion with the complainant's prior trademarks and to damage the complainant's registration in the eyes of the public.

In the present case, Respondent reproduces Complainant's well-known prior trademarks. It is therefore obvious that it sought to create confusion in the public's mind.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, Complainant must first of all establish rights in a trademark or service mark and secondly that the Domain Name is identical or confusingly similar to that trademark or service mark.

Complainant has established that it is the owner of several trademark registrations for LEROY MERLIN. The Domain Name incorporates the trademark LEROY MERLIN in its entirety, with the deletion of the space between the two parts of the trademark and the addition of the letter “l” in the MERLIN part of the trademark, as an intentional misspelling of the trademark of Complainant. Many UDRP panels have found that a disputed domain name is identical or confusingly similar where the relevant trademark is recognizable within the disputed domain name or if a disputed domain name consists of a common, obvious or intentional misspelling of a trademark. See sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The generic Top-Level Domain (“gTLD”) “.com” is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that Complainant has proven that the Domain Name is confusingly similar to Complainant's trademarks under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In the opinion of the Panel, Complainant has made a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name. Complainant has not licensed or otherwise permitted Respondent to use any of its LEROY MERLIN or to register the Domain Name incorporating its trademarks. Respondent is not making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain to misleadingly divert Internet users or to tarnish the trademarks of Complainant.

Based on the undisputed submission and evidence provided by Complainant, the Domain Name does not resolve to an active website. The Panel does not consider such use a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Domain Name. There is also no evidence that

Respondent is commonly known by the Domain Name nor that Respondent has acquired any trademark or service mark rights. In the view of the Panel this case is a typical case of “typosquatting” which does not confer any rights nor interest in the Domain Name. In addition, the non-use of a domain name does not represent a *bona fide* offering of goods or services.

No Response to the Complaint was filed and Respondent has not rebutted Complainant’s *prima facie* case.

Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name has been registered and is being used in bad faith.

Noting the well-known status of the LEROY MERLIN trademarks and the overall circumstances of this case, the Panel finds it is more likely than not that Respondent knew or in any event should have known of Complainant’s LEROY MERLIN mark. This is also suggested by Respondent’s choice of the Domain Name, namely one which includes the entirety of Complainant’s LEROY MERLIN mark.

The Panel notes that the Domain Name does not resolve to an active website. It is well established that non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding (see [WIPO Overview 3.0](#), section 3.3.). Noting (i) the obvious “typosquatting” consisting of the insertion of the letter “l” in the Domain Name, (ii) the degree of distinctiveness and reputation of Complainant’s mark, (iii) the failure of Respondent to submit a response or to provide any evidence of actual or contemplated *bona fide* use, and (iv) the implausibility of any *bona fide* use to which the inherently misleading Domain Name may be put, the Panel finds that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith in a similar manner to that provided under paragraph 4(b)(iv) of the Policy.

The Panel finds that Complainant has proven that the Domain Name has been registered and is being used 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 Domain Name, <leroymerllin.com>, be transferred to Complainant.

/Dinant T. L. Oosterbaan/

Dinant T. L. Oosterbaan

Sole Panelist

Date: June 15, 2023