

## **ADMINISTRATIVE PANEL DECISION**

Remy Cointreau v. Elroy Hemmings  
Case No. D2022-3329

### **1. The Parties**

The Complainant is Remy Cointreau, France, represented by Nameshield, France.

The Respondent is Elroy Hemmings, Italy.

### **2. The Domain Name and Registrar**

The disputed domain name <remys-cointreau.com> is registered with WEDOS Internet, a.s. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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, and informing that the language of the registration agreement was Czech. The Center sent an email communication to the Complainant on September 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On September 12, 2022, the Center sent an email communication to the Parties in both Czech and English regarding the language of the proceeding. The Complainant filed an amended Complaint on September 13, 2022. On the same date, it filed a request that English be the language of the proceeding. The Respondent submitted no comments 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 both English and Czech of the Complaint, and the proceedings commenced on September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. The

Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 17, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on November 21, 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, created in 1990, is the result of the merger of holding companies of E. Remy Martin & C° and the Cointreau companies. It is also the result of successive alliances between companies operating in the same sector of wines and spirits. Its main activity is the production and the sale of cognacs, spirits and liqueurs.

The Complainant is the owner of the International trademark RÉMY COINTREAU with registration No. 895405, registered on July 27, 2006 for goods and services in International Classes 32, 33 and 43 (the "RÉMY COINTREAU Trademark").

The Complainant is also the owner of the domain name <remy-cointreau.com>, registered on October 7, 1996, which resolves to the Complainant's main website.

The disputed domain name was registered on September 1, 2022. It resolves to a default webpage of a website management platform.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its RÉMY COINTREAU Trademark, because the addition of the letter "s" and a hyphen is not sufficient to escape the finding of confusing similarity to the same trademark. The Complainant adds that the disputed domain name is a misspelled version of the RÉMY COINTREAU Trademark and represents a case of "typosquatting".

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known under the disputed domain name and is not related to the Complainant. The Complainant adds that it has not given any authorization to the Respondent to use the RÉMY COINTREAU Trademark or to apply for registration of the disputed domain name which is a typosquatted version of the RÉMY COINTREAU Trademark. The Complainant points out that the disputed domain name resolves to a parking webpage.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent must have registered the disputed domain name for its trademark value, as it represents a misspelling of the RÉMY COINTREAU Trademark and was intentionally designed to be confusingly similar with it. The Complainant contends that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, and points out that the disputed domain name has been set up with MX records, which suggests that it may be actively used for email purposes.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Procedural issue - Language of the proceeding**

According to the information provided by the Registrar, the language of the registration agreement for the disputed domain name is Czech. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or 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.

The Complainant requests that the language of the proceeding would be English, and notes that English is the language most widely used in international relations and is one of the working languages of the Center. The Complainant adds that in order to proceed in Czech, the Complainant would have to retain specialized translation services at a cost very likely to be higher than the overall cost of this proceeding. According to the Complainant, the use of Czech in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of this proceeding. The Complainant notes that the Complaint is written in English but the Center notified the Respondent of the Complaint in Czech (and English) and afforded the Respondent the opportunity to participate in the proceeding using the Czech language.

The Center has sent all its communications to the Respondent in both English and Czech, and has invited the Respondent to express its views on the language of the proceeding. The Respondent did not respond and did not make any objections to the Complainant's request that the proceeding be held in English. The Respondent did not show any intention to participate in the proceeding. Furthermore, the disputed domain name currently resolves to a default page of a website management platform in the English language.

In view of the above, the Panel finds no reasons to conclude that the Respondent would be disadvantaged if the language of the proceeding is English, and accepts that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding be English.

### **6.2. Substantive issues**

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name [...]”

The Respondent however did not specifically respond to the statements and allegations contained in the Complaint and did not include any bases for the Respondent to retain registration and use of the disputed domain name.

#### **A. Identical or Confusingly Similar**

The Complainant has provided evidence that it is the owner of the RÉMY COINTREAU Trademark. Therefore, the Panel is satisfied that the Complainant has established its rights in the RÉMY COINTREAU Trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” generic TLD section of the disputed domain name for the purposes of its comparison to the Complainant’s trademark.

The disputed domain name reproduces the RÉMY COINTREAU Trademark in its entirety with the addition of a single letter “s” after “remy” and a hyphen between “remys” and “cointreau”. These two additional elements, as well as the absence of the acute accent, do not sufficiently distinguish the disputed domain name from the RÉMY COINTREAU Trademark, which remains easily recognizable in it. As discussed in section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the RÉMY COINTREAU Trademark in which the Complainant has rights.

#### **B. Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not authorized it to use the RÉMY COINTREAU Trademark and there is no relationship between the Parties. The Complainant maintains that the disputed domain name is inactive, represents a misspelling of the RÉMY COINTREAU Trademark and was intentionally designed to be confusingly similar with it. The Complainant contends that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, and points out that the disputed domain name has been set up with MX records, which suggests that it may be actively used for email purposes. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response or disputed the contentions of the Complainant.

The disputed domain name is confusingly similar to the RÉMY COINTREAU Trademark and represents a misspelling of it, which may not be noticed by Internet users accessing it or receiving email messages from accounts created under it.

Taking the above into account, and in the lack of any evidence or allegation pointing to a conclusion that the disputed domain name could be used for some legitimate activity unrelated to the Complainant's RÉMY COINTREAU Trademark, it appears as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant's RÉMY COINTREAU Trademark trademark and targeted it when registering the disputed domain name. The fact that MX records have been set up under the disputed domain name shows that most likely it is being used for email correspondence. The confusing similarity between the disputed domain name and the RÉMY COINTREAU Trademark creates the risk that recipients of email messages from email accounts at the disputed domain name may mistakenly believe that these messages originate from the Complainant. This use of the disputed domain name does not appear as a legitimate activity giving rise to rights or legitimate interests in the disputed domain name.

This is sufficient for the Panel to reach the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the RÉMY COINTREAU Trademark and represents a misspelling of it. The Respondent does not provide any plausible explanation for the registration and intended use of the disputed domain name. In view of this, and considering the Panel's analysis under the second element, the Panel concludes that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the RÉMY COINTREAU Trademark.

The disputed domain name is inactive. However, as discussed in section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, some of the factors that have been considered relevant in applying the passive holding doctrine include the degree of distinctiveness or reputation of the complainant's mark, the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the domain name may be put.

The Panel finds these factors to be present here. The RÉMY COINTREAU Trademark has distinctive appearance and reputation, the Respondent has not submitted a Response or provided evidence of any contemplated good faith use of the disputed domain name. The Panel therefore sees no basis to conclude

that the disputed domain name, being a confusingly similar misspelling of this distinctive trademark, could be put to any good faith use unrelated to it. Moreover, the fact that MX records have been set up under the disputed domain name creates the risk that Internet users receiving email messages from accounts created under it may wrongly believe that they are receiving correspondence from the Complainant, and may act to their detriment under such wrong impression.

In view of the above, the Panel finds 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, <remys-cointreau.com>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: November 28, 2022