Decision for dispute CAC-UDRP-100377

Case number	CAC-UDRP-100377
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Domain names	FINMECCANICAGROUP.COM

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	FINMECCANICA - Società per azioni

Complainant representative

Organization	desimone & partners

Respondent

Name	yan song

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other proceedings.

IDENTIFICATION OF RIGHTS

The Complainant has an extensive portfolio of registered national and international marks including also Community Trade Marks numbers 30388411 and 2542116. See below as to the extensive use and international fame of the Complainant's name and marks.

FACTUAL BACKGROUND

SUMMARY OF FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENTS:

This Complaint is submitted in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreements, pursuant to which the domain names that are the subject of this Complaint are registered, incorporate the Policy. The domain names were registered on March 28, 2012 as shown by the WHOIS reports.

The first respondent, is the original registrant, Duan Zuochun, and the second, his alter ego, Yan Song, to whom the disputed domains were purportedly transfered on the same day the Complaint was sent to Duan Zuochun by the Complainant by email on 21.09.2012. This is evidenced by a transfer between them immediately. The WHOIS reports show the putative

transfers on 23.09.2012 for FINMECCANICAGROUP.COM and 21.09.2012 in relation to FINMECCANICA.BIZ. Yan Song is a fictitious name/person as the name is from chinese history, Yan Song was a Chief Grand Secretary of Ming Dynasty, and also a football player born in 1981. Besides the changes related to the owner and his addresses, nothing else was changed. Only Duan Zuochun could have made the changes so quickly and without any other changes. Duan Zuochun also wrote to the Complainant seeking a new reduced price for the sale of both domain names on 21.09.2012.

The Complainant requests the LANGUAGE of the proceeding be ENGLISH becase Duan Zuochun is familiar with it and made the offer above in it, and one of the two registrars supports English as the language of the proceeding. Duan Zuochun is familiar with international domain name strategy (see further below as to other WIPO proceedings).

Finmeccanica is Italy's leading industrial group in the high technology sector and ranks among the top ten global players in aerospace, defence and security. Finmeccanica is Europe's leading defence systems company and is well positioned at international level, and has a strong presence in the space sector, where it is a pioneer in the satellite services market. Furthermore, the group has substantial expertise and a well-established position on the global transport and power generation markets. It is a multinational and multicultural group with a clear and recognized reputation for technological excellence which is essential for commanding an international leadership position in the high tech sectors in which it operates. The Finmeccanica group has its headquarters in Italy, and has permanent establishments with significant production assets in three domestic markets - Italy, the UK and the USA - where approximately 85% of Group staff work. It has also built up a significant presence in France, Germany and Poland. Finally, it has established a significant network of partnerships in high-potential countries worldwide. In total it has more than 70,000 employees, of whom, 43% work abroad in some 50 countries on five continents. The group's international presence has grown constantly in recent years, and at present Finmeccanica' s industrial facilities are spread worldwide with about 350 companies, joint ventures, partnerships and joint industrial projects throughout the world. The technological excellence of its products has made it not only a global competitor, but also a strong partner in several significant international projects. SuperJet 100, Eurofighter, B787 Dreamliner, ATR, Joint Strike Fighter, Galileo and the International Space Station are just a few examples of the partnerships that Finmeccanica has established with major global players in aerospace and defence. In 2010, Finmeccanica generated revenues of EUR 18.7 billion (an increase of 2.9% as compared with 2009) and obtained orders totalling EUR 22.5 billion (an increase of 6.4% as compared with 2009). Finmeccanica invests about 11% of its revenues in research and development. Thanks to the agreement completed in 2005 with BAE Systems, the Group acquired important technological and production assets in the UK and reconfigured its entire Defence and Security Electronics sector. In 2008, Finmeccanica in fact completed the acquisition of 100% of the American group DRS Technologies, leader in the supply of products and services for Defence and Security Electronics. It was the largest acquisition ever carried out by a European company in the American Defence industries sector and represents the coronation of Finmeccanica's long journey towards growth.
In conclusion, Finmeccanica today is truly a multi-domestic and multicultural group, with 74,497 employees, 43.3% of which work outside of Italy. Furthermore the Complaint is often called and known as "Finmeccanica Group"

Finmeccanica owns trademark registrations all over the word and in particular in the EU, Germany and China as well in USA and in many other jurisdictions and owns many Finmeccanica domain names including the .com, .org and .net and many many others.

Duan Zuochun has been running web sites as web parking sites. In total he owns more that 400 domain names. WIPO Arbitration Board has already had experience of him and there are recent decisions in which the Board accepted the Complainants' arguments, declaring him as acting in bad faith and ordering transfer of domain names; he was ordered to transfer LOROANDPIANA.ASIA; PAULSHARK.COM and PAUL-SHARK.NET and ETRO.ASIA. From a rapid search it seems that he registered ZEGNAERMENEGILDO.NET, ACQUADIPARMA.ORG, GUERLAIN.INFO, LOCCITAINE.BIZ and also ABNAMROBANK.IN and EVEN FONDAZIONEALTAGAMMA.COM.

On 6 September 2012, the Complainant sent a warning letter (via e-mail and by Registered Mail) to Duan Zuochun and he replied seeking to sell the domains. On 21 September 2012 it sent the Complaint by email and Duan Zuochun replied on the same day asking for Euro 3000 for each domain name.

NO ADMINISTRATIVELY COMPLIANT RESPONSES HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

1. Similarity

Top level suffixes, namely ".biz", ".info" and ".org", are to be disregarded in the threshold assessment of risk of confusing similarity under the first element of the Policy. WIPO Case No. D2001-0602, SBC Communications v. Fred Bell aka Bell Internet. The disputed domain names are otherwise identical with Complainant's trademarks. See "ARCELORMITTAL", WIPO Case No. D2003-0598, MADRID 2012, S.A. v. Scott Martin-MadridMan Websites.
Therefore the comparison has to be made between FINMECCANICAGROUP and FINMECCANICA on one side and FINMECCANICA on the other. It is self evident that the trademark are identical or quasi identical and certainly confusingly similar.

The Complainant has registered a substantial series of FINMECCANICA domain names in addition to its extensive registered trade mark holdings. The risk of confusion is also increased by the fact that the Complainant's trademarks are registered in class 36 covering estate services and the theme of the web sites at the disputed domain names is real estate activities.

2. No Rights or Legitimate Interests

There is no evidence at all that either respondent is commonly known by the disputed domain names. The Respondents are known under different trade names and have no authorization or licence to use FINMECCANICA. In similar circumstances, panels considered that no bona fide or legitimate use of the disputed domain name could be claimed by respondents, WIPO Case D2000-0055, Guerlain SA v. Peikang, WIPO Case D2008-0488, BHP Billiton Innovation Pty Ltd. v. OS Domain Holdings IV LLC, WIPO Case D2009-0258, Mpire Corporation v. Michael Frey.

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, panels have recognized and the consensus view is that paragraph 4(c) of the Policy shifts the burden to respondents to come forward with evidence of a right or legitimate interest in the Domain Name, once the Complainant has made a prima facie showing indicating the absence of such rights or interests, see WIPO Case No. D2000-0270, Document Technologies, Inc. v. International Electronic Communications Inc.

The disputed domain names are currently in use as pay-per-click parking pages, attracting as many internet visitors as possible to those websites. The domain names are mere doors to other websites which have paid for advertisement and which in many cases are not connected in any manner to the Complainant. This effectively shifts the burden to the Respondents to demonstrate rights or legitimate interests in the domain names.

Visitors to the disputed domain names are directed to parking pages showing advertising of different products and services, some of them being related to the motor sector. This is a diversion of potential consumers from the Complainant and its partners and cannot be considered a bona fide offering of goods and services (CAC Case 100358 www.arcelormittal.biz).

Previous UDRP panels have held that Duan Zuochun uses a domain name, which incorporates a third party's trademark in connection with a web site that merely lists links to third party web sites is not a bona fide offering of services and is not a legitimate non-commercial or fair use of the disputed domain name, see WIPO Case No. D2007-1499, E.J. McKernan Co. v. Texas International Property Associates, WIPO Case No. D2010-1437, Lardi Ltd v. Belize Domain WHOIS Service Lt Inc, WIPO Case No. D2007-1415, Asian World of Martial Arts Inc. v. Texas International Property Associates.

3. Bad Faith
The disputed domain names have been registered and are being used in bad faith.

As to bad faith registration, when registering the disputed domain names, the Respondents were necessarily aware of the Complainant's well-known business and reputation in its specific sectors. See WIPO Case D2010-1290, Meilleurtaux v. Domain Manager of Bondi Junction.

Here intentional use is made of the Complainant's marks in the disputed domain names to attract traffic to websites and other on-line locations for commercial gain by confusing consumers as to ownership or sponsorship of the website. This constitutes bad faith within the meaning of paragraph 4(b) (iv) of the Policy, WIPO Case No. D2000-1495, America Online, Inc. v. John Zuccarini, also known as Cupcake Message, Cupcake Messenger, The Cupcake Secret, Cupcake Patrol, Cupcake City, and The Cupcake Incident.

Duan Zuochun has adopted the same strategy and has been involved in similar cases with the same pattern before. In several cases he was found to have acted in bad faith and transfer was ordered.

The domain names are so obviously connected with the Complainant's trademark and its services that the very use by someone with no connection with the Complainant suggests "opportunistic bad faith," WIPO Case No. D2000-0226, Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0163, Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., net, WIPO Case No. D2001-0781, Fortuneo v. Johann Guinebert.

Further, Duan Zuochun tried to sell the domain names for a price. See WIPO, Abadaba case D2008-1984 of 22.2.2009. The Complainant asserts that this offer is further evidence of registration and use of the domain name in bad faith under paragraph 4(b) (i) of the Policy". Duan Zuochun offered to sell, for EURO 6000, the two domains despite the minimal costs paid for registration and the earnings from the web parking sites. This is the strategy of a person that holds more than 500 domain names - we believe Duan Zuochun offers them to the legitimate owners as soon as he receives warning letters.

RESPONDENTS: No Responses to the Complaint have been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondents to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

We find it more likely than not that Yan Song is the alter ego of Duan Zuochun. Further and alternatively, both Respondents accepted Registrars' terms which include the UDRP and we find in relation to both that all procedural and substantive requirements under UDRP are met and there is no reason why it would be inappropriate to provide a decision.

Having applied paragraph 11(a) of the Uniform Domain Name Dispute Resolution Policy Rules and considering paragraphs 10(b) and (c) of those Rules and Rule 8 of the Supplemental Rules and taking all considerations into account, including in particular, the communications by Duan Zuochun in English in the email offers to sell the domains, the Complainant's request that the language of the proceedings be in English was granted.

PRINCIPAL REASONS FOR THE DECISION

The Panel found that the domain names were confusingly similar to the Complainant’s trade marks and that on the evidence submitted, the Respondents had no rights or legitimate interests in the domain name. Considering Complainant's numerous trade mark registrations, international fame and widespread use of its marks; based on the use of the domain names for websites resolving to pay per click sites, the offer to sell for an inflated price and the last minute attempt to transfer, the Panel found that the domain names were registered and used in bad faith and that all circumstances justify transfer.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FINMECCANICAGROUP.COM**: Transferred
2. **FINMECCANICA.BIZ**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2012-10-31

Publish the Decision