Decision for dispute CAC-UDRP-100611

Case number	CAC-UDRP-100611
Time of filing	2013-10-24 16:32:34
Domain names	FINMECCANICAGALLERY.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FINMECCANICA

Complainant representative

Organization	desimone & partners

Respondent

Organization	DOMAINS BY PROXY LLC

OTHER LEGAL PROCEEDINGS

None of which it is aware.

IDENTIFICATION OF RIGHTS

The Complainant has established registered trademark rights on which it can rely in this proceeding.The Complainant has produced documentary evidence of such registration of trademarks for FINMECCANICA in Italy and internationally and the Panel accepts this evidence. Included among the trademarks relied on is the following: Trademark registered number 005236617 for FINMECCANICA registered on August 3, 2007 with The Office of Harmonization in the Internal Market of the European Community (" the FINMECCANICA mark").

FACTUAL BACKGROUND

The following particulars have been provided by the Complainant.

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 totaling EUR 22.5 billion (an increase of 6.4% as compared with 2009). Finmeccanica invests about 11% of its revenues in research and development.
Its history starts in the 40s when the "Società Finanziaria Meccanica Finmeccanica" was set up by the "Istituto per la Ricostruzione Industriale" (IRI) to manage State participation in the mechanical and ship-building industries which would be acquired by IRI during its first fifteen years of activity.
Finmeccanica was given a clearly defined task and substantial resources to restructure important companies which would become the core of the mechanical industry for the next fifty years: Ansaldo, Alfa Romeo, San Giorgio, Sant'Eustachio, Navalmeccanica, Cantieri Navali dell'Adriatico.
Attention focused on sectors such as automobiles, ship building, railways and industrial machinery, with an eye on the emerging electronics sector.

In the recent years, Finmeccanica continued with coherence and success along the path of progressive internationalization, unceasing innovation and integration of its own competences to offer increasingly more advanced solutions to the market. 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. This is how the “SELEX family” was started. Later, the Defence and Security Electronics sector would be further strengthened with the acquisition of the Italian company Datamat, merged into the new asset Elsag Datamat, and the British company Vega. With the whole of these companies, Finmeccanica became part of a narrow list of international players in integrated systems and laid the basis for its subsequent growth in this sector as well.

The year 2005 was also the year of the Space Alliance, thanks to which Finmeccanica became the leading European company in the space industry. With Alcatel, which became a part of Thales in 2007, the Group formed two joint ventures, today called Thales Alenia Space (manufacturing activity) and Telespazio (satellite services). Still in 2005, Ansaldo STS was established, into which all the Group’s railway signaling business was transferred. Immediately afterwards, 60% of the company was placed on the Stock Exchange.

In the same year, Alenia Aeronautica began working with Boeing for the B787 Dreamliner, the most advanced programme in the civil aviation field.
In 2007, thanks to the C-27J, the Group was awarded, in a team with L-3 and Boeing, the extremely important job order for the modernization of the US Army and Air Force cargo aircraft fleet, in the context of the Joint Cargo Aircraft programme.

In 2008, Finmeccanica in fact completed the acquisition of 100% of the US 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.
The Complainant refers to three products or events in history in which Finmeccanica was involved and are known to the international consumers at large:
1. Marine One , the US President helicopter
2. Tornado's European air program
3. The first US railway in the history – Union Swicth and Signal now Ansaldo Sts a Finmeccanica Company.

Finmeccanica owns trademark registrations all over the word and in particular in USA and Finmeccanica domain names.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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 Respondent to have no rights or legitimate interests in respect of the Domain Name (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 Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has established rights in its FINMECCANICA mark.

The disputed domain name is confusingly similar to the FINMECCANICA mark as it includes the entirety of the mark, together with the generic word "gallery". It is now well established that the use of a trademark together with a generic word does not negate a finding of confusing similarity that is otherwise present, as it is in the present case. That is so because an internet user would naturally assume that the domain name was an official domain name of Complainant leading to an official website of the Complainant dealing with a gallery of the goods and services of Complainant or that the domain name and website were in some other way associated with the Complainant and its trademark.

The Respondent has no rights or legitimate interests in the disputed domain name because it is apparent from the totality of the evidence that the Respondent is not known by the domain name or a name related to the disputed domain name, the Respondent has no authorization or licence from the Complainant to use FINMECCANICA in a domain name or in any other manner and the Respondent has registered a domain name and used it for a website intended to profit from confusion created by a disputed domain name which cannot give rise to a right or legitimate interest in the domain name .Moreover , the Respondent is using the disputed domain name to attract Internet users to its website which is a vehicle for paid advertisements for goods and services that are not connected to the Complainant. Such a diversion of potential customers of the Complainant is not a bona fide offering of goods and services. There is also no evidence showing that the Respondent has a right or legitimate interest in the domain name.

The disputed domain name was registered and has been used in bad faith because, as the Panel finds, at the time of registration of the domain name the Respondent must be taken to have been aware of the Complainant’s well-known name and trademark and of its business and reputation in the sectors of industry in which it is engaged. In addition, the use of a proxy service is indicative of bad faith registration and use and the totality of the evidence shows that the Respondent intentionally sought to use Complainant’s mark in the disputed domain name to attract Internet users to websites and other on-line locations for commercial gain by confusing consumers as to sponsorship of the website.
The Respondent has also been involved in similar cases with the same pattern as that demonstrated in the present case showing that the Respondent has registration multiple domain names based on the registered trademarks of others. The Respondent could have conducted a search that would have alerted it to the Complainant's trademark and business and the likelihood of confusion if the Respondent went ahead and registered and used the domain name.Either the Respondent did not conduct such a search or did so and ignored the results, both of which indicate bad faith. Moreover, as the Complainant's FINMECCANICA mark enjoyed and still enjoys an established reputation, the Respondent failure to reply to the substance of Complainant's cease and desist letter and provide some evidence of good-faith use implies that the disputed domain name was used in bad faith by the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FINMECCANICAGALLERY.COM**: Transferred

PANELLISTS

Name	**The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2013-12-10

Publish the Decision