Decision for dispute CAC-UDRP-100380

Case number	CAC-UDRP-100380
Time of filing	2015-09-08 11:27:43
Domain names	ALENIA.INFO

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FINMECCANICA S.p.A.

Complainant representative

Organization	desimone & partners

Respondent

Name	NAILIL KHOIRIYAH

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name ALENIA.INFO (the 'Domain Name').

IDENTIFICATION OF RIGHTS

Finmeccanica S.p.A. (the “Complainant”) is the owner of registered trade marks for ALENIA across a number of territories worldwide, including the European Union, the United States of America and Indonesia which predate the registration of the disputed Domain Name.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Finmeccanica S.p.A. (the “Complainant”) 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 also a pioneer in the satellite services market, and has substantial expertise and a well-established position in the global transport and power generation markets.

The Finmeccanica group and its partner businesses employ 70,000 employees, and the group has an international presence that has grown to the point where its covers 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 including the SuperJet 100, Eurofighter, B787 Dreamliner, ATR, Joint Strike Fighter, Galileo and the International Space Station.

“Alenia” is also part of the company name of AleniaAermacchi, a Finmeccanica company. AleniaAermacchi is the Italian leader in aeronautics, amongst the world’s top players in the design, development, manufacture and support of commercial and military trainers and unmanned aircraft systems.

The registrant, respondent in these proceedings, Nailil Khoiriyah (the “Respondent) is a physical person based in Indonesia. The Domain Name points to a default holding page for a software company. The site seems to have no other scope than attracting users to the software company's holding page, having no connection with the Complainant, but trying to take advantage of the reputation of the ALENIA trade mark.

On 16 July 2015 the Complainant sent, via email, a warning letter to the Respondent to which he did not reply.

The disputed Domain Name was registered on 28 May 2015.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or Confusingly Similar to a Trademark or a Service Mark in which the Complainant has Rights (Policy, Para. 4(a)(i))

The Complainant’s trade mark ALENIA and the domain name <alenia.info> are identical.

The applicable top-level .info suffix in the Domain Name would usually be disregarded (as it is a technical requirement of registration), except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark.

Rights or Legitimate Interests (Policy, Para. 4(a)(ii))

The Complainant claims that the Respondent has no right or legitimate interests in respect of the Domain Name.
There is no evidence at all that the Respondent is commonly known by the Domain Name.

The Domain Name is being used to advertise the business of the software company providing the holding page, a provider that it is known under a completely different trade name, i.e. Softaculous Webuzo.

The Respondent is using the Domain Name for attracting as many Internet users as possible to the software business' website, a site that is unduly taking advantage of the renown of the ALENIA trade mark(s).

The Respondent has not been licensed or otherwise authorised to use any of the Complainant’s trade mark(s) or to apply for or use any domain name incorporating such trade mark(s).

Third UDRP Element: Registration and Use in Bad Faith (Policy, Para. 4(a)(iii))

The domain name has been registered and is being used in bad faith. When registering the Domain Name, the Respondent was aware of the Complainant’s well-known business and reputation in its specific sectors.

The Respondent "knew or should have known" about the existence of the Complainant's trade mark. Circumstances in which panels have made such a finding have included those in which the Complainant's trade mark(s) were shown to be well known or in wide use on the Internet or otherwise at the time the domain name was registered, or when a respondent's

denial of knowledge is otherwise highly improbable.

Furthermore, as the Domain Name corresponds to the Complainant's trade mark(s), it is so obviously connected to the Complainant that its very use by someone with no connection with the Complainant suggests bad faith.

As said above, the Domain Name is resolving to a default website page generated by Softaculous Webuzo. Softaculous indeed seems to be the name of the Company based in India, Softaculous Ltd, and corresponds to the name of one of the products by Softaculous (named the same). It seems that the Domain Name has no other scope than to attract Internet users to the website for commercial gain by confusing consumers.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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.

The Complainant, being represented by desimone & partners in Italy, filed its complaint in relation to the Domain Name with the Czech Arbitration Court on 4 September 2015.

The CAC formally commenced proceedings on 14 September 2015 and notified the Respondent accordingly.

The Respondent failed to submit an administratively compliant Response within the time frame required in this Complaint, and a Notification of Respondent's Default was therefore issued by the CAC on 13 October 2015.

However, it should be noted that the CAC received on 13 October 2015 several emails from the Respondent claiming that the Respondent's email was hacked and the Domain name was deleted. Nevertheless, the Respondent did not submit any evidence in that regard. As the Registrar confirmed the disputed Domain name is locked during the pending administrative proceeding, so the Domain Name could not be deleted, the Panel is of the opinion that it is appropriate to deliver a decision in these proceedings.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Legal - Solicitors, as the Panel in these UDRP proceedings on 13 October 2015.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR - paragraph 4(a)(i) of the Policy

The disputed Domain Name 'alenia.info' consists of the Complainant's ALENIA mark registered in the European Union, the United States of America and in Indonesia (the latter being the country of residence for the Respondent), combined with the '.info' suffix.

The '.info' suffix may be disregarded when it comes to considering whether the Domain Name is identical or confusingly

similar to a trade mark in which the Complainant has rights.

As a result, the Panel concludes that the disputed Domain Name is identical to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS - paragraph 4(a)(ii)of the Policy

The Respondent does not appear to have any trade marks associated with the ALENIA mark. There is no evidence that he is commonly known by this mark and there is nothing to suggest he has any consent from the Complainant to use this mark.

The Respondent has not provided any evidence to show he has used the disputed Domain Name for any bona fide offering of goods or services of his own. The redirection to a software company's holding page is not a bona fide offering of goods and services under 4(c)(i) of the Policy and the Panel believes it is not a legitimate non-commercial or fair use under 4(c)(iii) of the Policy.

Accordingly, the Panel finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii)of the Policy.

REGISTERED AND USED IN BAD FAITH - paragraph 4(a)(iii)of the Policy

Paragraph 4(b) of the Policy sets out non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith including circumstances where, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Domain Name resolves to a website of a third party software company. The Complainant claims that the Respondent is likely to earn advertising revenue by diverting visitors to this website. As there was no administratively complaint response from the Respondent, the Panel finds it reasonable to make a finding that the Respondent has attempted to attract and cause confusion amongst Internet users, for commercial gain. The Panel believes from the facts that the Respondent had the Complainant and the reputation of its ALENIA trade mark in mind when registering the Domain Name.

As such the Panel finds that the Complainant has made out its case under paragraph 4(b)(iv) of the Policy, and therefore the Domain Name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALENIA.INFO**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2015-10-26

Publish the Decision