

Decision for dispute CAC-UDRP-102002

Case number CAC-UDRP-102002

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Domain names saint-gobain-fr.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization COMPAGNIE DE SAINT-GOBAIN

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Name BENOIT BAZIN

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademarks:

- Saint-Gobain (device), International Trademark Registration No. 740184, registered on July 26, 2000;
 - Saint-Gobain (word) International Trademark Registration No. 740183, registered on July 26, 2000;
 - Saint-Gobain (device), International Trademark Registration No. 596735, registered on February 11, 1992;
 - Saint-Gobain (device), International Trademark Registration No. 551682, registered on July 21, 1989.
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FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that it is a French company specialized in the production, processing and distribution of materials.

For 350 years, the Complainant has consistently demonstrated its ability to invent products that improve quality of life. It is now one of the top 100 industrial groups in the world and one of the 100 most innovative companies.

The Complainant owns several international trademarks and is also the owner of a large domain names portfolio.

The disputed domain name was registered on April 7, 2018.

The Complainant states that the disputed domain name is confusingly similar to its trademarks since the addition of the geographical term "fr" (for France) is not sufficient to escape the confusion. The disputed domain name wholly incorporates the Complainant's mark and this may be sufficient to establish confusing similarity.

Furthermore, the Complainant contends that the addition of the gTLD ".com" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way to the Complainant's business.

The Complainant also argues that the Respondent has no relationship with Complainant's business and is not authorized or licensed to use the trademark. The Complainant adds that the website under the disputed domain name displays a "404 page" and the disputed the domain name is used by the Respondent for e-mail phishing purpose.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant contends that the Respondent was aware of the Complainant and its trademark and uses the disputed domain name in bad faith by disrupting Complainant's business and creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name to commercially benefit from Complainant's goodwill by using the disputed domain name for phishing purposes.

Thus, the Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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.

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns numerous international trademark registrations that incorporate the "Saint-Gobain" element.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition

("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name incorporates the Complainant's "Saint-Gobain" mark plus the addition of the "fr" element.

As stated in 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" (see par. 1.7).

The Complainant's trademark is fully included and clearly recognizable in the disputed domain name.

The element "fr" and the suffix.com shall be disregarded under the confusing similarity test as they do not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110

Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and Vertical Solutions Management, Inc. v. webnet-marketing, inc., FA 95095, National Arbitration Forum).

The Complainant states that the website under the disputed domain name displayed a "404 page".

The Complainant states that the Respondent is not related in any way to the Complainant's business and is not authorized by the Complainant to use its trademark in the disputed domain name.

The Complainant further contends that the disputed domain name is used for phishing purposes and provides a respective proof (a copy of an e-mail message).

It is well accepted that the use of a domain name for illegal activity (e.g. phishing or other types of fraud) can never confer rights or legitimate interests on a respondent (see par. 2.13.1 of WIPO Overview 3.0 and CAC Case No. 101962).

There is no proof of legitimate rights or interests of the Respondent available in this case.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

The Complainant alleges use of the disputed domain name for phishing and states that there was a "404 page" on the website under the disputed domain name. The evidence of the case supports the Complainant's allegation.

The disputed domain name is not actively used on the date of the decision.

There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of the WIPO Overview 3.0).

One has to look at the circumstances of a case taking into account, in particular, 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 (see e.g. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *"Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. D2017-0246; CAC Case No. 101435, CAC Case No. 101691 and CAC Case No. 101640).

The Panel has also conducted its own investigation under paragraph 10(a) of the Rules and discovered the following information.

According to the Whois data the Respondent's name is Benoit Bazin.

The results of the Internet search conducted by the Panel revealed that Benoit Bazin is a senior Vice-President of the Complainant (this information was found on the official website of the Complainant as well as on the other Internet sites).

The Panel finds it hard to believe that the actual Vice-President of the Complainant is involved in the registration and use of the disputed domain name.

The Panel also notes that there is no proof that the communication from the CAC was delivered to the Respondent to the e-mail address indicated by the Respondent in the whois database.

It appears that the Respondent provided false contact information, at least a false name.

This increases the authenticity of the Complainant's allegation of the phishing practice since the disputed domain name fully incorporates the trademark of the Complainant as well as its company name and a name of one of the company's top managers is also used, thus creating an impression of a connection between the Complainant and the website under the disputed domain name.

A number of prior Panels have found that deliberately furnishing false/misleading contact information to a domain name registrar and disguising respondent's true identity can constitute bad faith in registration and use (see e.g. Bank for International Settlements v. G.I Joe, WIPO Case No. D2004-0570; Verio Inc. v Sunshinehh, WIPO Case No. D2003-0255; CAC Case No. 101845 and CAC Case No. 101326).

It also appears from the evidence available and overall circumstances of this case that the disputed domain name has been used to trick users into believing that the disputed domain name and the website are owned by or associated to the Complainant (see CAC Case No. 100817).

To sum up, the Panel finds the following indicators of bad faith registration and use in this case:

- 1) A strong reputation of the Complainant's trademark;
- 2) Absence of any explanations from the Respondent, absence of any evidence of actual or contemplated good-faith use and the implausibility of any good faith use of the disputed domain name given the other circumstances of this case;
- 3) Likely provision of false contact information by the Respondent as well as evidence of use of the disputed domain name for illegal purposes (phishing) and an attempt to create a false impression of association between the Complainant and the website under the disputed domain name;
- 4) It appears from the evidence and circumstances of this case that the Respondent had in mind the Complainant and its mark while registering the disputed domain name and targeted the Complainant intentionally.

The Panel also finds that this case falls within the provisions of paragraph 4(b)(iv) of the Policy.

Since the disputed domain name entirely incorporates the Complainant's mark with an additional small element "fr" (that may be an additional indication of a connection with the Complainant since the Complainant is a French company), the Respondent would be taking advantage of the Complainant's strong trademark by intentionally attempting to attract visitors to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or a product or service on the Respondent's website or location.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. SAINT-GOBAIN-FR.COM: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION 2018-06-25

Publish the Decision
