Decision for dispute CAC-UDRP-102027

Case number	CAC-UDRP-102027
Time of filing	2018-05-28 09:10:06
Domain names	saint-gobin.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	Milen Radumilo

OTHER LEGAL PROCEEDINGS

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

FACTUAL BACKGROUND

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

The Complainant is a French company specialised in the production, processing and distribution of materials.

The Complainant is organized in three Sectors: Innovative Materials, Construction Products and Building Distribution.

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 is the owner of several trademarks SAINT-GOBAIN®, such as the international trademark SAINT-GOBAIN n°551682 registered since 21 July 1989.

The Complainant also owns many domain names which include its trademark SAINT-GOBAIN, such as the domain name <saint-gobain.com> registered since 29 December 1995.

The disputed domain name <saint-gobin.com> was registered on 19 May 2018.

The disputed domain name points to a parking page with commercial links (“PPC”).

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.

PRINCIPAL REASONS FOR THE DECISION

1. Confusing similarity

The Complainant provided evidence of several registered trademarks "SAINT-GOBAIN", all registered in name of the Complainant:

- International trademark "SAINT-GOBAIN" with registration number 551682 (figurative mark), registered since 21 July 1989 for various classes (01,06,07,09,11,12,16,17,19,20,21,22,23,24,37,39,41);
- International trademark "SAINT-GOBAIN" with registration number 740183 (figurative mark), registered since 26 July 2000 for various classes (01,02,03,06,07,08,09,10,11,12,17,19,20,21,22,23,24,37,38,40,42);
- International trademark "SAINT-GOBAIN" with registration number 740184 (figurative mark), registered since 26 July 2000 for various classes (01,02,03,06,07,08,09,10,11,12,17,19,20,21,22,23,24,37,38,40,42)

Given - inter alia - the fact that only one letter (“A”) was deleted from the Complainant's registered trademarks "SAINT-GOBAIN", and given the identical or at least similar pronunciation of "SAINT-GOBAIN" and "SAINT-GOBIN" in the French language, the Panel accepts that the disputed domain name is indeed confusingly similar to the Complainant's trademarks "SAINT-GOBAIN".

The ".com" suffix may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Panel notes that the Complainant contends that:
(i) the Respondent is not known by the disputed domain name;
(ii) the Respondent is not related in any way with the Complainant;
(iii) the Complainant has not granted a licence or authorization to the Respondent to make any use of the Complainant's trademark "SAINT GOBAIN", or to apply for registration of the disputed domain name;
(iv) the disputed domain name is a "typosquatted version" of the Complainant's trademarks "SAINT-GOBAIN"; and
(v) the domain name points to a parking page with commercial links ("PPC").

The Panel weighs these arguments as follows:

The Complainant states that the Respondent is not related to the Complainant. This is not refuted by the Respondent. The Complainant further states that the Respondent was not authorised by the Complainant to register the domain name or to make use of its trademark "SAINT-GOBAIN". There is no indication that the Respondent would have any rights or legitimate interests in the names "SAINT-GOBIN" or "SAINT-GOBIN". There is no indication that the name "SAINT-GOBIN" would be commonly used in the vocabulary of a particular language or would be a name of a city, village, region or other geographic entity. Given the fact that the Respondent is not related to the Complainant; given the fact that the website available through the disputed domain name contains pay per click links for - inter alia - "performance plastics", and given the fact that the 'SAINT-GOBAIN" trademarks of the Complainant are registered for - inter alia - building materials including plastics, the Panel finds that the Complainant has at least made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Panel notes that the Complainant contends that:
(i) the misspelling in the disputed domain name - i.e., deletion of the letter "a" - was intentionally designed to be confusingly similar with the Complainant's registered trademarks (in other words: this is a case of misspelling or typosquatting);
(ii) the disputed domain name is confusingly similar to its well-known trademark "SAINT-GOBAIN" (given the distinctiveness and the reputation of the Complainant's trademarks, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks); and
(iii) the website available through the disputed domain name is a parking page with commercial links (this does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use).

The Panel weighs these arguments as follows:

The Complainant's "SAINT-GOBAIN" trademark registrations predate the registration of the disputed domain name.

The disputed domain name reflects the Complainant's registered trademark "SAINT-GOBAIN" in its entirety, with the deletion of the letter "A" (the pronunciation of the disputed domain name remains identical or at least similar to the pronunciation of the Complainant's trademarks).

The Panel has no knowledge of a geographical name "SAINT-GOBIN" or another existing concept, name, person or word "SAINT-GOBIN".

The Complainant's "SAINT-GOBAIN" trademarks are valid for several goods/services including building materials and including plastics. The website available through the disputed domain name contains pay per click links for inter alia "Saint-Gobain" (i.e., the registered trademark of the Complainant) and "performance plastics", which appear to be a kind of plastics used as building materials. The combination of the Complainant's trademark "SAINT-GOBAIN" (with deletion of the letter "A') and the pay per click links on the website of the Respondent (covering adds for sub-classes covered by the Complainant's trademarks) is an indication of bad faith.

The Complainant claims that its "SAINT-GOBAIN" trademarks are well-known. The Complainant's claim seems likely, based on the evidence provided by the Complainant, and is not refuted by the Respondent.

On the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's trademarks and the scope of these trademarks. In light of the factors listed above, it seems highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

In conclusion, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SAINT-GOBIN.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2018-07-05

Publish the Decision