Decision for dispute CAC-UDRP-102245

Case number	CAC-UDRP-102245
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Domain names	baikowskichimie.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BAIKOWSKI

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Boostability

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark rights for the word mark BAIKOWSKI, registered in numerous jurisdictions (e.g. French word mark registered with the French Intellectual Property Office (INPI) under registration No. 1706232 since November 13, 1991, duly renewed, and covering products in class 1 (industrial chemistry products, mineral oxides, mineral powders)).

FACTUAL BACKGROUND

The Complainant, Baikowski, is an international industrial manufacturer of specialty inorganics based in France. The Complainant was founded in 1904 and is currently listed on the European stock exchange Euronext. The Complainant focuses on tailoring high purity alumina powders and formulations, as well as other fine oxides and chemical composites for technical ceramics, precision polishing, crystals, additives & coatings applications.

The Complainant is the owner of the registered word mark BAIKOWSKI in several classes in numerous countries all over the world.

The disputed domain name <baikowskichimie.com> has been registered on July 3, 2017 by the Respondent. The disputed domain name resolves to a blog about skin care and cosmetics administered by a person claiming to be named “Cindy”. The blog contains a single blogpost made on August 2, 2017 about “Nonsurgical Cosmetic Treatments That Can Greatly Enhance Your Appearance”.

PARTIES CONTENTIONS

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PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademark. The Complainant further contends that the incorporation of the Complainant's famous trademark in the disputed domain name by the Respondent coupled with an inactive website evidences bad faith registration and use.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.
The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

2. The Respondent has no rights or legitimate interests in respect of the domain name; and

3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the Disputed Domain Name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered BAIKOWSKI trademark, which is used in connection with its business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <baikowskichimie.com> incorporates the Complainant's BAIKOWSKI trademark in its entirety, merely adding the non-distinctive suffix "chimie". The addition of the suffix "chimie" does not add to the distinctiveness of the disputed domain name as it corresponds to the French word for chemistry. Moreover, the Complainant is registered in France and is active in the chemical industry. The addition of a descriptive term does not prevent a finding of confusing similarity (See section 1.8, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

Additionally, it is well established that hyphens and the generic top-level suffix ".com" may be disregarded when considering whether the disputed domain names are confusingly similar to the trademark in which the Complainant has rights.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (See Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Whois records relating to the disputed domain name indicate that the Respondent is known as "boostability" and the blog connected to the disputed domain name is administered by a person claiming to be named "Cindy". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed. Moreover, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name consists of the Complainant's BAIKOWSKI trademark together with the additional descriptive French word "chimie". Such an addition to the disputed domain name of descriptive terms within the trademark owner's field of commerce may trigger an inference of affiliation (See section 2.5.1, WIPO Overview 3.0).

The Respondent has been using the disputed domain name to resolve to a blog about skin care and cosmetics. Since the Complainant is active in the chemical industry, manufacturing chemical powders and oxides, the Panel is of the opinion that the composition and use of the disputed domain name risks suggesting sponsorship or endorsement by the Complainant of the blog.

Additionally, the Respondent appears to have not been making use of the website connected to the disputed domain name since August 2017. The passive holding or non-use of a domain name is, in appropriate circumstances, evidence of a lack of

rights or legitimate interests in the domain name (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; American Home Products Corporation vs. Ben Malgioglio, WIPO Case No. D2000-1602; Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244) (see also section 2.9, WIPO Overview 3.0).

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the BAIKOWSKI trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive BAIKOWSKI trademark in its entirety with the addition of the French word "chimie", which relates to the Complainant's industry sector.

The Respondent has been using the disputed domain name in relation to a blog about skin care and cosmetics. The blog prominently displays the sign "Baikowski Chimie" which contains the Complainants BAIKOWSKI trademark in its entirety. The blog only contains one blogpost which was posted on August 2, 2017. It appears that the Respondent has not used the website connected to the disputed domain name since. The Panel is of the opinion that, although the website is not a "typical" parked or pay-per-click website, the lack of content and active use of the blog connected to the disputed domain name indicates a passive holding of the disputed domain name.

According to the Panel, the passive holding of the disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, supra).

In the present case, the Panel is of the opinion that the Complainant's BAIKOWSKI trademark is distinctive and widely used, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent. Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BAIKOWSKICHIMIE.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

2019-01-15

DATE OF PANEL DECISION 2019-01-15

Publish the Decision