Decision for dispute CAC-UDRP-102533

Case number	CAC-UDRP-102533
Time of filing	2019-06-24 11:26:31
Domain names	belrongroup.com

Case administrator

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

Complainant

Organization	Belron International Limited

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	Nicholas Sanders

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings, either pending or decided, which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous BELRON trademarks among which, in particular, the following:

- BELRON (word mark), US trademark registration No. 4431348, filed on 19 December 2012 and registered on 12 November 2013, for goods and services in classes 12, 21 and 37;

- BELRON (word mark), Swiss trademark registration No. P-470819, filed on 22 February 1999 and registered on 27 March 2000, for goods and services in classes 12, 21, 37 and 42;

- BELRON (word mark), Australian trademark registration No. 1374083, dating 26 July 2010, for goods and services in classes 12, 21 and 37;

- BELRON (word mark), European Union trademark registration No. 1482405, filed on 31 January 2000 and registered on 26 March 2001, for goods and services in classes 1, 9, 12 and 37.

The Complainant is also the owner of several domain names containing the trademark BELRON, such as <belron.com>, dating back from 14 July 1998, <belron.net>, dating back to 1 November 2001 and <belron.ch>, dating back to 9 August 2007.

FACTUAL BACKGROUND

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

The Complainant is the world's largest dedicated vehicle glass repair and replacement company, with more than 30 thousand employees in 35 countries worldwide. In 2018, the Complainant served 17.8 million consumers with a turnover of more than 3.8 billion Euros. The Complainant operates through the following three main brands:

- CARGLASS, in continental Europe, Africa, Asia, the Middle East and South America;
- SAFELITE AUTOGLASS, in the United States of America;
- AUTOGLASS, in the UK and Ireland.

The Complainant's official website is at www.belron.com, where it informs its customers and business partners about the history, services, family of marks and financial data of the Belron group.

The disputed domain name was registered on 27 March 2019 using a Whois privacy protection service. No active website is associated with the disputed domain name, but an MX record was configured in the domain name server to send e-mails under the address "....@belrongroup.com". On 27 March 2019, the Respondent sent a fraudulent e-mail to the Complainant, in order to seek an economic advantage. As a consequence, the Complainant filed a take down request before the Respondent's Registrar Enom LLC. The latter disabled the MX records associated with the disputed domain name and suspended the same.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions may be briefly summarized as follows:

1. Confusing similarity of the disputed domain name with the Complainant's trademark

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's earlier BELRON trademark because it entirely reproduces it with the mere addition of the word "group", which is merely descriptive. The reference to the term "goup" provides the impression that the Respondent is affiliated with the Complainant and is doing business using the Complainant's trademark.

2. The Respondent has no rights or legitimate interest in respect of the disputed domain name

According to the Complainant, the Respondent lacks rights and legitimate interests in the disputed domain name for the following reasons:

- the Complainant did not authorize, license or permit the Respondent to use the trademark BELRON;

- the Respondent does not appear to be or have been commonly known by the disputed domain name. A simple Internet search shows that this trademark is exclusively linked to the Complainant;

- the Respondent has not used the disputed domain name in connection with a bona fide offering of goods and services. Although there is no active website associated with the disputed domain name, the Respondent used the e-mail address "...@belrongroup.com" to send a fraudulent e-mail to the Complainant, in order to seek an economic advantage.

3. Registration and use of the disputed domain name in bad faith

According to the Complainant, the Respondent was clearly aware of the disputed domain name at the time of its registration, given the international reputation and the distinctive character of the BELRON trademark, as well as the fraudulent activity put in place by the Respondent through the e-mail address associated with the disputed domain name.

The fact that the disputed domain name does not lead to an active website, cannot prevent a finding of bad faith. Passive holding of domain names can amount to use in bad faith in the presence of additional circumstances, such as: (i) the degree of distinctiveness or reputation of the Complainant's trademark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use to which the domain name may be put.

In the instant case, the trademark BELRON is a long-established mark in the vehicle glass repair field, in many countries worldwide, including in the US, where the Respondent is located. Moreover, the Complainant's trademark enjoys distinctive character. The disputed domain name is passively held and no conceivable good faith use of it is possible. On the contrary, the disputed domain name has been used to send a fraudulent e-mail to one of the Complainant's employees in an attempt to obtain an unfair economic advantage. Finally, the Respondent has concealed its identity through a privacy service provider.

The Respondent has failed to file a Response.

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. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

The disputed domain name is confusingly similar to the Complainant's trademark as it fully consists of the BELRON trademark, followed by the word "group". The addition of the dictionary term “group”, to the Complainant’s trademark, in the disputed domain name does not avoid a finding of confusing similarity (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”). The word "group" refers to the Complainant's corporate structure, as the Complainant operates through various companies spread out in different countries worldwide. Thus, when facing the disputed domain name, Internet users will think that it is associated to a website containing information on the Complainant's corporate organization, and will be misled about the origin of the domain name (see in this respect, among others, CAC Case No. 102517 for the domain name <groupboursorama.com> and CAC Case No. 101709 for the domain name <arla-group.com>).

In light of the foregoing, the Panel is satisfied that the first condition under the Policy is met.

2. The Respondent does not have rights or legitimate interests in respect of the disputed domain name

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, a complainant must make 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 relevant evidence demonstrating rights or legitimate interests in the domain name.

In the instant case, the Complainant did not authorise, license or permit the Respondent to use the trademark BELRON within the disputed domain name. Moreover, nothing in the Complaint appears as evidence of the fact that the Respondent is commonly known by the disputed domain name.

The Respondent used the disputed domain name to send at least one fraudulent e-mail to the Complainant, in order to illegitimately seek an economic advantage. This behavior, can certainly not amount to a bona fide offering of goods and services, or to a legitimate non-commercial or fair use of the disputed domain name. See in this respect, paragraph 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), which states the following: "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

For all reasons mentioned above and in the absence of any valuable contrary argument by the Respondent, the Panel concludes that also the second condition under the Policy has been satisfied.

3. Registration and use of the disputed domain name in bad faith

In light of the circumstances of this case, it is clear that the Respondent was well aware of the Complainant's trademark and activities at the time of the registration of the disputed domain name. First, the trademark BELRON is distinctive and the Respondent is totally unrelated to it. These only circumstances already make it very unlikely that the Respondent registered the disputed domain name by chance. However, there is a second key point to take into consideration, namely that the Respondent configured the MX records of the disputed domain name server with an e-mail address containing the Complainant's trademark and, on the same day of the registration of the disputed domain name, sent a fraudulent e-mail to the Complainant in order to seek an economic advantage. It is therefore clear that the main purpose of the registration of the disputed domain name was to generate an illegitimate profit from it. For a similar case, see also Beam Suntory Inc. v. Name Redacted, WIPO Case No. D2018-2861 where this behavior was clearly considered use and registration of the disputed domain name in bad faith.

Lastly, the Panel notes that the fact that the disputed domain name does not lead to an active website cannot prevent a finding of bad faith, particularly when the disputed domain name has been used to illegitimately impersonate the Complainant in order to perpetrate fraud through e-mails. Moreover, account is to be taken to the fact that according to some evidence provided by the Complainant, not only the MX records of the disputed domain name were disabled, but the disputed domain name itself was suspended following a take down notice that the Complainant sent to the disputed domain name Registrar. Therefore, the non-use of the disputed domain name is not necessarily ascribed to the Respondent, but could also be the result of the Registrar's activity.

For all circumstances mentioned above, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BELRONGROUP.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2019-08-27

Publish the Decision