Decision for dispute CAC-UDRP-102767

Case number	CAC-UDRP-102767
Time of filing	2019-11-08 10:08:22
Domain names	besix-group.net

Case administrator

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

Complainant

Organization	Besix Group

Complainant representative

Organization	Ulys

Respondent

Name	Laurent Peters

OTHER LEGAL PROCEEDINGS

The Complaintant states, that he initially iniciated a complaint relating to three domain names. The first domain name (.com) was released in the meantime. However, concerning the two others domain names, the registrars have disclosed the identification (registration was anonymous) and it appeared that the names of the holders are different for the two domain names. The Complainant has, therefore, decided to amend its complaint and limit it to one domain name: <besix.group>. The Complainant then filed a separate Complaint, based on the same facts and legal argument, for the disputed domain name at the case at hand.

The Complainant also filed a criminal complaint to the police In Belgium. A judge is currently investigating the case but there is no trial before a court so far.

The Complainant filed furthermore an ADR before the belgian center for arbitration (CEPANI) in relation with the domain name <besix-group.be>. A decision has been issued on October 25, 2019. The Panel has granted the transfer of the domain name.

Concerning the disputed domain name the Panel is not aware of further/other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant registered the BESIX trademark in numerous countries around the world including the Benelux and also

holds several domain names including the BESIX trademark, such as <besixgroup.be>, <besixgroup.com>, <besix.com>, <besix.be> etc.

FACTUAL BACKGROUND

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

The Complainant is a leading construction company in Belgium, with the company name “BESIX GROUP”.

It is the leading Belgian group in this sector and ranks 69 in the list of top international contractors. Active since 1909, the group is based in Brussels and operates in Europe, the Middle East, Oceania, Africa, North America and Asia. In 2018, the Complainant had a turnover of 2.54 billion euros and 15,000 employees worldwide.

The Complainant participated in the construction of buildings and infrastructure throughout the world, including: the Burj Khalifa in Dubai, the world's tallest tower; buildings of the European Parliament in Brussels; the Grand Egyptian Museum on the Giza pyramids plateau; the Sheikh Zayed Mosque in Abu Dhabi; major infrastructure of the Expo 2020 in Dubai as well as the Belgian and French pavilions; the renovation of the Atomium in Brussels; the Al Wakrah Stadium for the 2022 FIFA World Cup in Qatar; a terminal at the Charles de Gaulle Airport; the Belgian scientific polar research station in Antartica, Princess Elisabeth Antartica.

The Complainant is the owner of several domain names, including <besix.com>, <besix.net>, <besix.be>, <besix.fr>, <besixgroup.com> and <besixgroup.be>.

From June 2018 until filling the Complaint an undefined number of companies (the Complainant has been able to identify 200 of them, but there can be more unidentified victims) have been contacted by e-mail to place an order in the name of the Complainant.

The fraudulent scheme was as such:

• The e-mail is composed of XX@besix-group.com where XX is either the name of an employee (like larosse@besix-group.net) or a department (like sales@besix-group.com);

• This e-mail is sent to a business relation (but not always) of the Complainant;

• The e-mail places an order (PCs, hard disks, phones, office supplies, etc.) in the name of the Complainant;

• The e-mail reproduces the Complainant’s trademark, uses the colour scheme and logo of the Complainant as well as its address, and is drafted in order to cheat the recipient who will falsely believe that the order originates from the Complainant.

Needless to say that none of these e-mails was effectively originating from the Complainant: they all are an attempt to fraudulently obtain the delivery of goods using the name, colour, logo, trademark and reputation of the Complainant.

To that end, the following e-mail addresses in relation to the disputed domain name were notably used:

Domain name <besix-group.net>: sales@besix-group.net, larosse@besix-group.net, contact@besix-group.net, info@besix-group.net

In this scheme, the domain name is a critical element: it gives the impression that the e-mail [XX]@besix-group.net is effectively originating from the Complainant and it is an important element in trying to convince the recipient that the request is made on behalf of the Complainant.

A complaint against “unknown (X)” was filed with the police and an investigating judge, an investigation is currently conducted.

To the best knowledge of the Complainant, the domain names are not used in the purpose of hosting a website; their mere use is to exchange e-mails in the context of this largescale fraud.

The Complainant has worked in close collaboration with the police in the past months. In order not to interfere with the collection of evidence by authorities, it has been decided not to file an ADR earlier. The case has come to a point where it is now possible to file such Complaint without interfering with the enquiry of the police.

A similar ADR Complaint was filed in relation with the domain <besix-group.be>, which has also been used in a similar fraudulent way.

In the view of Complainant the disputed domain name is confusingly similar to the trademarks and domain names of Complainant. There is furthermore no relation between the domain names holder and the Complainant. The Respondent has no right (or legitimate interest) to hold the disputed domain name.

Complainant also is of the view that Respondent was aware of the existence of Complainant when registering the disputed domain name, because the Complainant is the largest Belgian constructor and among the top 69 in the world. The disputed domain name has been carefully chosen in order to be as close as possible to the Complainant's websites, in order to exchange e-mails from a domain that appears as original as possible. Bad faith is therefore in the view of Complainant blatant.

It is considered that the apparent intention of disrupting the business of the Complainant, through contacting its co-contractors under the identity of the Complainant, but using a different e-mail address to place fraudulent orders, should be interpreted as an attempt, by the domain names holder, to knowingly create a risk of confusion between him and the Complainant. Such a conclusion is confirmed by the use of the trademark and the company name of the Complainant.

Therefore the Respondent in the view of Complainant acted in bad faith when registered the disputed domain name and is using it also 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.

PRINCIPAL REASONS FOR THE DECISION

A. Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence that he is the owner of the trademark "Besix".

The trademark Besix is incorporated in its entirety in the disputed domain name. The only difference between the disputed domain name and the trademark Besix is the descriptive term "group" at the end of the disputed domain name.

The disputed domain name is confusingly similar to the trademark as it fully incorporates the established trademark despite the descriptive term "group" at the end of the disputed domain name. This is not sufficient to escape the finding that the domain name is confusingly similar to the registered Trademark Besix.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the trademark Besix.

The first limb of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the disputed domain name and the Panel so finds.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Bad Faith

The Panel agrees with Complainant, that the disputed domain name is substantially indistinguishable to Complainant's incorporated business name, corporate domain name, website, and Trademarks, and was registered in bad-faith to defraud Complainant's customers. As shown by the presented evidence, Respondent used the look-a-like domain name to commit fraud and Respondent actually was successful using the disputed domain name for such purposes and confuse the customer of Complainant.

Furthermore, the Panel is sure that Respondent was aware of the existence of Complainant when registering the disputed domain name as the Complainant is the largest Belgian constructor and among the top 69 in the world, and the disputed domain name has been carefully chosen in order to be as close as possible to the Complainant’s websites, in order to exchange e-mails from a domain that appears as original as possible.

It is considered that the apparent intention of disrupting the business of the Complainant, through contacting its co-contractors under the identity of the Complainant, but using a different e-mail address to place fraudulent orders, is an attempt, by the Respondent, to knowingly create a risk of confusion between him and the Complainant. Such a conclusion is confirmed by the use of the trademark and the company name of the Complainant.

On these grounds, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BESIX-GROUP.NET**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2019-12-06

Publish the Decision