Decision for dispute CAC-UDRP-102957

Case number	**CAC-UDRP-102957**
Time of filing	**2020-03-11 10:08:46**
Domain names	**besix-belgium.net**

Case administrator

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

Complainant

Organization	**Besix Group**

Complainant representative

Organization	**Ulys**

Respondent

Name	**Michael Hannart**

OTHER LEGAL PROCEEDINGS

The Complainant filed a criminal complaint with the police In Belgium and the case is still under investigation.

The Panel asked the Complainant to confirm that there is no “legal proceedings initiated prior to or during” the administrative proceeding in respect of the domain-name dispute that is the subject of the complaint, according to Par.18 of the UDRP Rules, which was confirmed by the Complainant on April 20, 2020.

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademark registrations, such as:

• the Benelux word trademark No. 0872629 – BESIX, registered on February 10, 2010 in classes 35, 36, 37, 40 and 42;

• the European Union figurative trademark No. 1039445 – BESIX, registered on April 14, 2010 in classes 35, 36, 37, 40 and 42;

• the semi-figurative international registration No. 1039445 – BESIX, registered on April 14, 2010 in classes 35, 36, 37, 40 and 42;

• the Benelux figurative trademark No. 0872955 – BESIX, registered on February 10, 2010 in classes 35, 36, 37, 40 and 42.

The Complainant is the owner of various domain names, including:

• <besix.be> created on March 26, 2003;

• <besix.fr> created on May 27, 2003;

• <besixgroup.be> created on September 21, 2007.

The disputed domain name is:

• <besix-belgium.net> created on February 11, 2020.

The Complainant contends that the disputed domain name is used to generate e-mail addresses and send e-mails to place orders to several companies in the name of the Complainant.

FACTUAL BACKGROUND

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

Besix (the Complainant) is a leading Belgian construction company based in Brussels and operating 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.

Besix participated in the construction of buildings and infrastructures throughout the world, including notably: the Burj Khalifa in Dubai, buildings of the European Parliament in Brussels, the Grand Egyptian Museum on the Giza pyramids plateau, the Sheikh Zayed Mosque in Abu Dhabi, the renovation of the Atomium in Brussels, the AI Wakrah Stadium for the 2022 FIFA World Cup in Qatar, a terminal at the Charles de Gaulle Airport, and the Belgian scientific polar research station in Antartica, Princess Elisabeth Antartica.

A large number of companies have been contacted by e-mail to place orders in the name of the Complainant. The e-mail addresses used in this matter were generated with the disputed domain name and composed with the name of a department, such as: order@besix-belgium.net, sales@besix-belgium.net, procurement@besix-belgium.net.

The e-mails placed orders in the name of the Complainant, reproducing its trademark, its color scheme, its logo and its address, and were signed with the name of a Complainant’s employee.

Prior to this complaint, the Complainant had to file a complaint against the Respondent before the CAC, in relation with the domain names <besix.group> registered in March 2019. This domain name was also used for the perpetration of the same fraud. The decision issued on December 6, 2019 granted the transfer of the domain names (UDRP Decision 102573).

The Complainant requests the transfer of the disputed domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name <besix-belgium.net> is confusingly similar to its BESIX trademark.

The disputed domain name incorporates the whole of the Complainant's BESIX trademarks which have been registered since February 10, 2010 and April 14, 2010. The Complainant considers that this similarity is neither affected by the adjunction of the generic word "Belgium" nor by the suffix ".com" or the addition of a hyphen.

The Complainant asserts that the Respondent registered the disputed domain name precisely because it believed that the domain name was confusingly similar to a trademark held by the Complainant. Here, the disputed domain name was registered and used in order to cheat the recipient of the mails sent under these domain name.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It asserts that it has no legal relation nor business relationship with the Respondent and that it ignores its exact identity since it has registered the disputed domain name anonymously, and since it is impossible to deduce a real identity from information transmitted by the registrars.

Furthermore, the Complainant asserts that the Respondent used a very similar e-mail address as to the Complainant's ones, usurped the identity of its employees and used a company number different from the Complainant's one but close enough to draw attention.

To the knowledge of the Complainant, the Respondent does not hold, whether in the European Union, or elsewhere, any known trademark that corresponds to the disputed domain name. It is neither known as a company or other organization under the name "Besix group" or "Besix" and has never been granted a license by the Complainant to use its trademark.

The Complainant relies on the prior CAC decision on <besix.group> (UDRP Decision 102573). In this prior case, the domain name holder was the same person that holds the present disputed domain name, the Respondent did not answer and did not provide any proof of rights or legitimate interests in the domain name.

The Complainant adds in this respect that panels have categorically held that the use of domain names for illegal activity (e.g. phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a Respondent.

Given these circumstances, the Complainant considers that it doesn't have to prove that the Respondent has been convinced of illegal activity by a Court. The existence of more than 200 identified victims, the deep enquiry by the police, and the nature of the fraud are enough to demonstrate a blatant illegal activity.

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith.
It affirms that is sure that the Respondent was aware of the existence of the Complainant when registering the domain name, given its notoriety, and it is confirmed by the fact that the Respondent choose this name to be as close as possible to the Complainant's websites, in order to exchange emails from a domain that appears as original as possible.

According to the Complainant, the apparent intention of disrupting its business through contacting its co-contractors under its proper identity, but using a different e-mail address to place fraudulent orders, should be interpreted as an attempt, by the Respondent, to knowingly create a risk of confusion. Such an argument is endorsed by the use of the trademark and the company name of the Complainant.

Under these circumstances, the Complainant contends that the bad faith of the Respondent is confirmed by the use of the disputed domain name without its consent, the anonymous registration, and the use of similar e-mail addresses and similar company numbers.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

The Complainant has submitted evidence of its prior registered BESIX trademarks which are protected in Belgium and in other countries.

The disputed domain name entirely incorporates the Complainant's BESIX trademark.

In the disputed domain name, the geographical term "Belgium", was added to the BESIX trademark. This is the name of the country, where the Complainant is domiciled.

The disputed domain name entirely incorporates the Complainant's BESIX trademark.

The adjunction of the geographical term "Belgium" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks.

The confusing similarity is neither affected by the extension ".com" since it is a technical necessity in the use of Internet, nor by the hyphen.

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

Pursuant to paragraph 4(c) of the Policy, the respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Respondent did not respond to the Complaint. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The Respondent is not related in any way with the Complainant and there is no indication that the Respondent is commonly known by the term "BESIX" or "BESIX GROUP", or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent used the disputed domain name to generate e-mail addresses incorporating the Complainant's trademark, logo and address and even using the name of some of its employees or departments as signatoree.

The Respondent is using the disputed domain name to send e-mails to the Complainant's business relations in order to place fraudulent orders by pretending to be affiliated to its business, usurping the identity of the Complainant's employees.

Such use does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use.

Moreover, the Respondent is pursuing a pattern of conduct initiated in 2019, when it registered and used the domain name <besix.group>. The Respondent used the same scheme of action.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a panel to be evidence of bad faith registration and use of a domain name. It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, 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 of a product or service on the respondent’s website or location.”

Given the use of the disputed domain name, the fact that the Respondent is domiciled in Belgium and that this is the second UDRP case that the Complainant has to file against the Respondent who is using the same pattern of conduct, the Panel finds that the Respondent was well aware of the Complainant’s rights in the BESIX trademarks when it registered the disputed domain name.

This generic term “Belgium” explicitly indicates the Respondent’s goal to target the Complainant and to take advantage of the Complainant’s business.

In this regard, the entire reproduction of the Complainant's BESIX trademark without its authorization with the addition of merely generic terms, the fraudulent use of the Complainant’s company name to place orders, and the failure of the Respondent to submit a response or to provide any evidence of good faith use, prove that the Respondent targeted the Complainant when it registered the disputed domain name. His pattern of conduct characterizes bad faith.

Therefore, the Panel finds that the disputed domain name was registered and used in bad faith with the Complainant in mind, to disrupt the Complainant’s activities, by creating a likelihood of confusion with the Complainant’s BESIX trademark.

The Respondent repeated the exact same scheme of action with its prior domain names registrations, it used the same name for registration, the same address, the same Complainant’s employee usurped identity, the same type of message etc. with different domain names still including the Complainant’s BESIX trademark.

Such repeated conduct in despite of the various procedures that have been held, confirms the Respondent’s 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

The disputed domain name incorporates the BESIX trademark. The addition of the geographical term "Belgium" does not avoid the similarity.

The Respondent is using the disputed domain name to send emails to the Complainant’s business relations in order to place fraudulent orders by pretending to be affiliated to its business, usurping the identity of the Complainant’s employees.

Such use does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use.

The entire reproduction of the Complainant's BESIX trademark without its authorization with the addition of merely generic terms, the fraudulent use of the Complainant’s company name to place orders, and the failure of the Respondent to submit a response or to provide any evidence of good faith use, prove that the Respondent targeted the Complainant when it registered the disputed domain name. His pattern of conduct characterizes bad faith registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2020-04-14

Publish the Decision