

Decision for dispute CAC-UDRP-104237

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| Case number | CAC-UDRP-104237 |
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| Time of filing | 2021-12-16 09:15:56 |
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| Domain names | batigere.com |
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Case administrator

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

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| Organization | BATIGERE Grand Est |
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Complainant representative

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| Organization | NAMESHIELD S.A.S. |
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Respondent

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| Name | Hochul Jung |
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of and relies upon the following trade mark registrations that comprise or incorporate the word "BATIGERE":

- French registered trade mark n° 1207148, for the "marque verbale" for "BATIGERE" in classes 19, 36 and 27 registered on 14 May 1982;

- French registered trade mark n° 3005592, for the "marque semi-figurative" incorporating the text "BATIGERE" in classes 36, 37, 43 and 45 registered on 4 February 2000; and

- European Union registered trade mark n° 2204113, for the work mark BATIGERE in classes 36, 37 and 42 filed on 3 May 2001 with a registration date of 20 August 2002.

FACTUAL BACKGROUND

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

Founded in 1947, the Complainant is a French company dedicated to housing in France.

The Complainant owns and communicates on Internet through various domain names. Its main domain name is <batigere.fr> registered on 29 September 1999.

The disputed domain name <batigere.com> was registered on 5 June 2007. It redirects to parking page with commercial links and is being offered on sale.

The Respondent has engaged in a pattern of registering trade marks as domain names in order to sell them.

See:

- Polydeck Screen Corporation v. Hochul Jung Forum Case No. FA1210001466223 (<polydeck.com>);
- Allianz SE v. Hochul Jung WIPO Case No. D2016-0266 (<allianz.net>);
- HusmanHagberg AB v. Hochul Jung; WIPO Case No. D2015-2275 (<husmanhagberg.com>);
- Nexcess.net L.L.C. v. Hochul Jung Forum Case No. FA1203001436101 (<nexcess.com>);
- Club Méditerranée S.A. v. Jung Hochul (a/k/a Hochul Jung), WIPO Case No. D2000-1427 (<clubmed.net>);
- Echelon Corp. v. Jung Hochul, WIPO Case No. D2001-0939 (<lonmark.com>);
- Biohit Oyj v. Hochul Jung, WIPO Case No. D2008-1548 (<gastropanel.com>).

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

The Panel is satisfied that the Complainant is the owner of a number of registered trade mark rights for BATIGERE.

In order to satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is “recognizable within the disputed domain name”; see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”). The disputed domain name takes the form “Batigere” in combination with the “.com” generic Top-Level Domain. The mark relied upon by the Complainant is, therefore, clearly recognisable in the disputed domain name.

The Complainant has, therefore, satisfied the Panel that the disputed domain name is confusingly similar to trade marks in which it has rights and has thereby made out the requirements of paragraph 4(a)(i) of the Policy.

Further, the Panel is satisfied on the material before it that it is more likely than not that the disputed domain name was registered and has been held in order to take some unfair advantage of the Complainant's trade mark rights; and most likely with the intention of selling the disputed domain name registration to the Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name. Holding a domain name for such a purpose provides no right or legitimate interest under the Policy and provides positive evidence that no such interest exists. Further, such activity falls within the scope of circumstances indicating bad faith set out in paragraph 4(a)(i) of the Policy.

In reaching that conclusion the Panel has relied upon the evidence of the Complainant that the disputed domain name has been continually offered for sale since initial registration and has not been used for any purpose other than to display a parking page with commercial links. However, particularly powerful in this case is the evidence that the Respondent has been held in numerous previous UDRP proceedings to have registered domain names with that intention. The Complainant identifies seven such cases between 2001 and 2017. There also appear to be additional cases where the Respondent has been a party to, and lost, UDRP proceedings.

In coming to this conclusion the Panel notes that the disputed domain name was registered nearly 15 years ago, which in turn raises the obvious question why these proceedings were not commenced much earlier. However, mere delay does not provide a defence under the Policy (see section 4.17 of the WIPO Overview 3.0). The Panel also questions (albeit as a non-French speaker, very hesitantly) whether there might be some conceivable generic use of the disputed domain name in that it arguably comprises the words “bâti” and “géré”. However, no such argument has been advanced by the Respondent and the mere fact that there might conceivably be a generic use, again provides no defence if (as the Panel has concluded) the real motivation for registration of the disputed domain name was to take advantage of its association with the Complainant's mark.

The Complainant has, therefore, also made out the requirements of paragraphs 4(a)(ii) and (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BATIGERE.COM**: Transferred

PANELLISTS

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| Name | Matthew Harris |
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| DATE OF PANEL DECISION | 2022-01-14 |
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Publish the Decision
