Decision for dispute CAC-UDRP-100574

Case number	CAC-UDRP-100574
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Domain names	sorelex.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	SIA "SORELEX"

Complainant representative

Organization	Krodere & Judinska, Attorneys at Law

Respondent

Name	Aldis Mineikis

OTHER LEGAL PROCEEDINGS

Combating of Economical Offences Bureau of the Central Criminal Police Department of the State Police of Latvia has initiated criminal proceedings No.118160002412 against the Respondent in accordance with the Section 18 “Criminal Offences against Property” of The Criminal Law. The criminal proceedings are in the stage of investigation.

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the following rights:

1. Mr. Yves Requillart’s unregistered trademark SORELEX, used in France since 1983;
2. The Complainant's company name SORELEX;
3. The Complainant's trade name SORELEX;
4. The Complainant's Latvian registration No. M 60 866 for the figurative trademark SORELEX, filed on 3 April 2009 and granted on 20 July 2009 for "ropes, twines, netting, canvas", in class 22.

FACTUAL BACKGROUND

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

PARTIES CONTENTIONS

The Complainant's contentions can be summarized as follows:

- The Complainant is a limited liability company, incorporated under the laws of the Republic of Latvia with its registration number 40003707115. The Complainant’s name is “SORELEX” and this name has not changed since its incorporation on 26.10.2004.

- The Complainant's activity is the manufacture of cordage, rope, twine and netting, machinery and equipment, fabricated metal products (except machinery and equipment), motor vehicles, trailers and semi-trailers, which it does under the name SORELEX .

- The Complainant used to operate a website at the Internet address “www.sorelex.com”, corresponding to the disputed domain name, from 5 December 2005 until 20 April 2011, on which it used to offer its services and goods.

- SORELEX is a fanciful word created by Mr. Yves Requillart in 1983 as the acronym for “Société de Relations Extérieures”.SORELEX has been used since 1983 in France as a company name and as an unregistered trademark.

- In 2004 Mr. Yves Requillart decided to participate as co-founder and shareholder of the Complainant in the Republic of Latvia. At that time, Mr. Yves Requillart granted an unwritten licence to the Complainant to use the term SORELEX as the name of the company yet to be incorporated, and after the Complainant's incorporation, on 26 October 2004, as trade name and registered trademark.

- The Respondent has never been authorized to register the domain name <sorelex.com> or to use the term SORELEX in any other way before or after the registration of the Complainant with the Commercial Register of the Republic of Latvia.

- Mr. Yves Requillart enjoys rights over the term SORELEX arising from the use of the SORELEX company name and trade mark since 1983, while the Complainant enjoys rights arising from its use of the SORELEX trade mark since 2005.

- The total balance of the Complainant in the beginning of 2005 was approx. EUR 46 760.00 and in the end of 2005 was approx. EUR 391 650.00; the net turnover in the beginning of 2010 was approx. EUR 930 450.00 and in the end of 2010 was approx. 648 128.00.

- The company name and trade name SORELEX are well known in the Republic of Latvia for their long use and their exclusive association with the Complainant.

- There is no evidence to suggest that there is a company or business other than the Complainant that uses the name SORELEX in the same area of industry as the Complainant.

- The Complainant is the owner of the national Latvian trade mark, SORELEX (figurative), filed on 3 April 2009 and granted on 20 July 2009, under registration number M 60 866. The Respondent is a citizen of the Republic of Latvia and the Complainant’s rights are valid in the country of the Respondent’s citizenship.

- The Respondent is one of the Complainant’s founders and minority shareholder (the Respondent owns 10% of the Complainant’s shares) and the Respondent used to act as the Complainant’s Chairman of the Board of Directors from 26 October 2004 to 20 October 2011.

- At the time of the registration of the disputed domain name, i.e. on 19 July 2004, the Respondent was well aware of Mr. Yves Requillart’s earlier intellectual property rights towards SORELEX and the Respondent as one of the Complainant’s founders knew that the planned name of the Complainant was SORELEX. Nonetheless, the Respondent registered the disputed domain name in his own name rather than in the Complainant’s name. The other shareholders and members of the Complainant’s Board of Directors did not pay attention to the fact that the disputed domain name had been registered in the Respondent’s name because the domain name <sorelex.com> served as the Complainant’s "official" website.

- In 2011 the Respondent was removed from the position of Chairman of the Board of Directors of the Complainant due to the fact that the Respondent secretly and illegally took most of the Complainant's assets, and led the Complainant into an insolvency situation (at the moment the Complaint has successfully resumed its economic activity).

- The Combating of Economical Offences Bureau of the Central Criminal Police Department of the State Police of Latvia has initiated criminal proceedings No.118160002412 against the Respondent, pursuant to Section 18 "Criminal Offences against Property" of the Latvian Criminal Law. The criminal proceedings are currently at an investigation stage.

- After the revocation of the Respondent's appointment as Chairman of the Board of Directors of the Complainant, the Respondent removed the Complainant's official website, and started using the offending domain name primarily for the purpose of disrupting the business of the Complainant, because the Respondent's obvious intention was to divert (redirect) potential customers of the Complainant to the Respondent's related company's website "www.belts.lv". This related company is named sabiedriba ar ierobezotu atbildibu "BELTS TROSES" (hereinafter "Belts Troses").

- Belts Troses is a limited liability company, incorporated under the laws of the Republic of Latvia under registration number 40002036873. The Respondent is the sole founder and was a shareholder of Belts Troses from 28 September 1995 to 9 April 2010. The Respondent acted also as Belts Troses' Chairman of the Board of Directors from 3 December 2003 to 16 April 2010.

- Belts Troses is one of the Complainant's competitors, as it sells steel wire ropes, chain products, webbing products and other rigging accessories (see the website at www.belts.lv).

- The existence of a connection between the Respondent and Belts Troses is evidenced also by both the "WHOIS" information of the disputed domain name, and the contents of the www.belts.lv website. According to the "WHOIS" information of <sorelex.com>, the Respondent's e-mail is administrator@belts.lv, which contains Belts Troses' domain <belts.lv> and according to the WHOIS of Belts Troses' website, the holder and technical contact e-mail is aldis@sorelex.com, which contains the Respondent's first name and the domain "sorelex.com".

- Within the meaning of the paragraph 4 of the Policy, the Domain name is identical to SORELEX, unregistered trademark of the Founder, the company name, trade name and registered Trade mark of the Complainant.

- In determining the similarity of SORELEX and the Domain name, letters of SORELEX and the Domain name must be compared. The differences between the SORELEX and the Domain name are only "www" and ".com". It is obvious that extension ".com" is not significant when identifying the Domain Name, since it is a generic ".com" domain suffix. As for letters "www", they are the abbreviation of the words "world wide web" in the "Internet World" and therefore, the letters "www" are not distinct for identifying the Domain name either (See Marie Claire Album v. Geoffrey Blakely, WIPO Case No. D2002-1015).

- The Domain name consists entirely of SORELEX and the Domain name does not have any additional words that would detract from or minimize the effect and dominance of the SORELEX in the domain name.
- The Respondent does not have any rights or legitimate interest in the domain name(s)

- 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 domain name.

- The Respondent has no rights or legitimate interests in the Domain name because the Respondent is not authorized in any way to use SORELEX and because the facts show an obvious intention of the Respondent to fraudulently obtain the Domain name and to benefit from the reputation of SORELEX name after the Respondent was removed from the position of the chairman of the board of directors of the Complainant.

- Moreover, there is no evidence to suggest that there is a company or business other than the Complainant that uses the name in the same area of industry as the Complainant.

- The Respondent uses the Domain name to attract potential customers to the Competitor’s website and to promote the products of the Competitor.

- According to established practice, the Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods - Nikon, Inc. v. Technilab, WIPO Case No. D2000-1774(February 26, 2001) (use of Nikon-related domain names to sell Nikon and competitive cameras was not a legitimate use); Kanao v. J.W. Roberts Co., Case No. 0109 (CPR July 25, 2001) (bait and switch is not legitimate).

- In other words, the domain name registrant would be using SORELEX for a legitimate purpose if it promoted solely the goods of SORELEX owner, but if it uses SORELEX in a domain name as a guise to promote other goods and services which is not in the interests of SORELEX owner, that use of SORELEX is wholly illegitimate.

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

- The Respondent, like everyone else in this industry, and also as former chairman of the board of directors of the Complainant knows the Marks of the Complainant. That being so, he could not have chosen or subsequently used the Marks in his Domain name for any reason other than to trade on that name and to confuse Internet users and by that means attract them to a website with a name which is the same as that of the Marks. That is, in itself, evidence of bad faith, both generally and specifically within the meaning of paragraph 4(b)(iii) and (iv) of the Policy.

- The Complainant indicates to the opinion taken in J. García Carrión, SA v. José Catalán Frías, WIPO Case No. D2000-0239, where the panel found that lack of respondent’s rights or legitimate interests in the domain name is undoubtedly indicative of registration in bad faith. In the Complainant’s opinion, this is the case in the present proceeding.

- The Respondent and the Competitor are using the domain name to run a business in open competition with the Complainant. It is clear that the Respondent and the Competitor want customers to come directly to them and it is equally clear that the Respondent and the Competitor are trying by means of the Domain name to divert or siphon off as many off them as it can and to get the business for themselves. That is clearly disrupting the business of a Complainant, for it is interrupting the progress of that business. The Respondent and the Competitor has attracted potential customers by using the Domain name without consent and creating the impression in the mind of at least some potential customers that is has connection with the Complainant.

- The Respondent was very well aware of the Complainants' earlier intellectual property rights when he transferred the Domain name. Nevertheless, the Respondent registered the domain name and started to divert the Internet users from the "official" website (the same as “www.sorelex.eu”). The Complainant believes that the sole possible purpose for which the Respondent has registered and is using the Domain name is to derive commercial gain from the diversion of Internet users from the Complainants' website.

- This view, that the conduct just described amounts to bad faith, is consistent with the view taken by other UDRP panels on analogous facts and particularly in cases where the names of well-known motorcar manufacturers have been used to sell spare parts made by other manufacturers. Thus, in Toyota Motor Sales, U.S.A., Inc. v. Pick Pro Parts Inc, WIPO Case No. D2005-0562, the owner of the domain name <lexus--parts.com>, an unauthorized dealer in Lexus parts, was directing the domain name to its website <pickproparts.com>, where Lexus parts could be bought, but alongside parts for more than thirty other brands. On the issue of bad faith that inevitably arose for decision, the Panel said:

- “Paragraph 4(b) of the Policy cites four non-exclusive circumstances that indicate bad faith in registering and using a domain name. The fourth is strikingly apposite here: using a domain name intentionally to attract Internet users to a site for commercial gain, by creating a likelihood of confusion with the complainant’s mark (Policy, paragraph 4(b)(iv)). The Respondent confusingly employs the Complainant’s marks in the Domain Names to attract Internet users to the Respondent’s commercial site, where the Respondent attempts to sell Complainant’s parts, as well as those of its competitors, evidently for commercial gain. This constitutes bad faith under paragraph 4(b)(iv) of the Policy. See Toyota

Motor Sales U.S.A., Inc. v. I.E. Mann d/b/a Everything Internet, FA0411000370902 (Nat. Arb. Forum, January 11, 2005), <autotoyotaparts.com> (respondent “commercially benefits from this diversion by selling products and services to Internet users who are searching under Complainant’s mark”); Toyota Motor Sales U.S.A., Inc. v. Indian Springs Motor, FA0305000157289 (Nat. Arb. Forum, June 23, 2003), <glennstoyota.com> and <usedtoyotalexus.com> (bad faith may be inferred where a respondent profits from its “diversionary use” of the complainant’s mark in a domain name that resolves to a commercial website and the respondent fails to respond with a plausible good-faith reason for using the mark)”.

- Those observations are equally applicable to the present case and show that, within the meaning of paragraph 4(b)(iv), there has been bad faith registration and use.

- Using a party’s name to redirect Internet users to an unrelated commercial site for profit is recognized under the Policy as evidence of bad faith registration and use (Policy, Paragraph 4(b)(iv)).

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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).

The Complainant cites a series of rights upon which this Complainant is based. In the Panel's view, the majority of these rights cannot be claimed against the registration of the disputed domain name, for the following reasons.

1. Mr. Yves Requillart’s unregistered trademark SORELEX, used in France since 1983

In the Panel's view, Mr. Requillart's use in France of the unregistered trademark SORELEX is irrelevant for the purpose of this procedure. First, Mr. Requillart is not the Complainant and therefore he is not part of these proceedings. Furthermore, the Complainant failed to provide any kind of evidence of the use of the SORELEX trademark in France. Moreover, no evidence has been provided as to the rights benefiting the user of an unregistered trademark in France.

2. The Complainant's company name SORELEX

The Complainant's company name does not give rise to a right that can be validly opposed to a domain name registration under the UDRP. As mentioned above, according to Paragraph 4(a)(i) of the Policy, to succeed in a UDRP, the Complainant must prove that the disputed domain name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights. Therefore, the scope of the Policy is limited to trademarks, whether registered or unregistered, and does not extend to company names.

3. The Complainant's trade name SORELEX

The same principle discussed under point 2. above for company names, applies to tradenames. The latter are still beyond the scope of application of the UDRP Policy. The question on whether or not the Policy should also extend to trade names has been thoroughly discussed during the Second WIPO Internet Domain Name Process, whose final report was published in 2001. In October 2002 the WIPO Member States took a decision on the several issues discussed during the WIPO Internet Domain Name Process, which was transmitted to the ICANN in 2003. As far as trade names were concerned, the General Assembly adopted the recommendation that Member States should keep the matter under review and raise the matter for further discussion if the situation so demanded. So far there have been no further discussions on the right to use trade names as valid rights to be opposed to the registration of domain names under the UDRP. See also WIPO Case D2001-0744, University of Konstanz v. uni-konstanz.com.

4. The Complainant's registered figurative trademark SORELEX

The last right upon which the Complainant relies to object to the registration and use of the <sorelex.com> domain name, is

the Complainant's figurative trademark SORELEX, whose application and registration date back to 2009. This trademark was filed for goods in class 22. In the Panel's view, this is the only legitimate right on which the Complaint can base its claim. The verbal part of the trademark is certainly identical to the disputed domain name, in that both consist of the term SORELEX. In the disputed domain name SORELEX is followed by the suffix .com, which however does not have any impact on the identity between the two signs, since the gTLD ".com" is deprived of distinctive character and is simply one of the available - and the most common - gTLD "designations". Likewise the figurative element of the Complainant's trademark does not change the assessment of identity between the two signs, considering that figurative elements cannot be part of domain names, and considering that the dominant component of the Complainant's trademark lies in the term SORELEX.

As a last point it is worth mentioning that the SORELEX trademark was applied for and registered almost 5 years after the registration of the domain name at dispute. As a matter of fact, the <sorelex.com> domain name was registered on 19 July 2004, while the SORELEX trademark was applied for on 3 April 2009 and was granted on 20 July 2009.
Nonetheless, Paragraph 4(a)(i)of the Policy does not require that the domain name against which a Complainant is filed be identical or confusingly similar to an earlier trademark or service mark. It simply requires that such an identity or confusing similarity exists (see also WIPO Case No. D2009-0239, which states: "The question of priority of the Complainant's trade mark rights is not an issue to be dealt with under paragraph 4(a)(i) of the Policy, as registration of a domain name before a complainant acquires corresponding trade mark rights does not prevent a finding of identity or confusing similarity: the UDRP makes no specific reference to the date on which the owner of the trade or service mark acquired rights (cf. WIPO Overview of WIPO Panel Views on Selected UDRP Questions; MADRID 2012, S.A. v. Scott Martin-MadridMan Websites, WIPO Case No. D2003-0598; Digital Vision, Ltd. v. Advanced Chemill Systems, WIPO Case No. D2001-0827; AB Svenska Spel v. Andrey Zacharov, WIPO Case No. D2003-0527; Iogen Corporation v. IOGEN, WIPO Case No. D2003-0544)".

The time of registration or use of the identical or confusingly similar trademark or service mark becomes relevant when one comes to examine the bad faith requirement, but not for the assessment of identity/confusing similarity with the disputed domain name (See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, which states that "the Registration of a domain name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity). The UDRP makes no specific reference to the date of which the owner of the trade or service mark acquired rights. However it can be difficult to prove that the domain name was registered in bad faith, as it is difficult to show that the domain name was registered with a future trademark in mind".

Therefore the Panel is satisfied that the first requirement under Paragraph 4(a)(i) of the Policy is met.

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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

Under Paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in respect of the Domain Name. Since the lack of rights or legitimate interest is a negative circumstance, it can often be a difficult, if not impossible, task for a complainant to establish. Paragraph 2.1 of the Second Edition of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, deals with this issue as follows:

“While the overall burden of proof rests with the complainant, 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. Therefore a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interest, the panel then weighs all the evidence, with the burden of proof always remaining on the complainant.”

The Complainant’s case is that the Respondent registered the <sorelex.com> domain name before the Complainant's

acquisition of rights over the name SORELEX. Nonetheless, the Panel is satisfied that the Complainant has made out a prima facie case, as such shifting the burden of proof on the Respondent.

Paragraph 4(c) of the Policy, lists - without limitation - three sets of circumstances any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the respondent's rights or legitimate interests to the challenged domain name for the purposes of paragraph 4(a)(ii) of the Policy". These circumstances are the following:

(i) that before any notice to the respondent of the dispute, the respondent's used, or made 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 the respondent has not acquired trade mark or service mark rights; or

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

In the Panel's view the Complainant - in the absence of any contrary argument by the Respondent - has successfully proved that the Respondent lacks right or legitimate interests in the <sorelex.com> domain name.

In particular:

- the Respondent's use of the disputed domain name is not in connection with a bona fide offering of goods or services; the Respondent is using the domain name to redirect Internet users to a competitor's website, where, most probably, the Respondent has a personal interest. The initial use of the <sorelex.com> domain name in connection with the Complainant's official website cannot provide the Respondent with a valid right or legitimate interest in the domain name at stake. As a matter of fact: (i) the Respondent was not authorised to register the domain name <sorelex.com> in his own name, rather than in the Complainant's name; (ii) although the initial use of the domain name <sorelex.com> was to the benefit of the Complainant, since 5 December 2005 until 20 April 2011 the domain name <sorelex.com> lead to the Complainant's official website, as soon as the Respondent was removed from his charge of Chairman of the Board of Director of the Complainant, the <sorelex.com> domain name ceased to be used in connection with the Complainant's website and the Respondent started using it to redirect to a competitor's website where, most probably, the Respondent has a personal interest. Said use continued ever since, despite the fact that investigations in connection with criminal proceedings are currently pending.

- the Respondent has not been commonly known by the disputed domain name;

- the Respondent is not making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue;

- the Respondent did not provide any other reason for which he should be considered to hold rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that also the second requirement under the Policy has been met.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Under Paragraph 4(a)(iii) of the Policy, in order to succeed in a UDRP the Complainant must prove that the disputed domain name was registered and has been used in bad faith.

As far as the registration of the <sorelex.com> domain name is concerned, it is necessary to analyse whether the fact that

the Complainant's SORELEX trademark was registered five years after the registration of the disputed domain name precludes a finding of registration in bad faith.

The matter has been discussed in the Second Edition of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions ("WIPO Overview"), under paragraph 3.1, which states the following:

"3.1 Can bad faith be found if the disputed domain name was registered before the trademark was registered/common law trademark rights were acquired?

Consensus view: Normally speaking, when a domain name is registered before a trademark right is established, the registration of the domain name was not in bad faith because the registrant could not have contemplated the complainant's non-existent right.

[cited decisions omitted]

However: In certain situations, when the respondent is clearly aware of the complainant, and it is clear that the aim of the registration was to take advantage of the confusion between the domain name and any potential complainant rights, bad faith can be found. This has been found to occur: shortly before or after a publicized merger between companies, but before any new trademark rights in the combined entity have arisen; or when the respondent (e.g., as a former employee or business partner, or other informed source) seeks to take advantage of any rights that may arise from the complainant's enterprises; or where the potential mark in question is the subject of substantial media attention (e.g., in connection with a widely anticipated product or service launch) of which the respondent is aware, and before the complainant is able to obtain registration of an applied-for trademark, the respondent registers the domain name in order to take advantage of the complainant's likely rights in that mark. (In all such cases, in order to have a chance to succeed in any filed UDRP complaint, the complainant must actually demonstrate relevant trademark rights, as these are a precondition for satisfying the standing requirement under the first element of the UDRP for rights in a mark.)

[cited decisions omitted]"

In this subject matter, the Complainant has pointed out the following:

- In 2004, Mr. Yves Requillart, creator of the SORELEX name and shareholder of a company named Sorelex s.a.r.l. operating in France under this name since 1983, decided to co-found and become one of the shareholders of the Complainant. As part of his contribution to the new company and actual Complainant, Mr. Requillart granted an unwritten license to use the name SORELEX as the company name of yet to be established Latvian company, and subsequent to the creation of that company, granted the right to register the SORELEX name in Latvia as a trademark.

- The Respondent is one of the Complainant's founders and minority shareholder; he was appointed as the Complainant's Chairman of the Board of Directors from 26 October 2004 to 20 October 2011, i.e. from the Complainant's date of incorporation to the date of revocation for alleged criminal offences (according to the Complaint, in 2011 the Respondent was removed from the position of Chairman of the Board of Directors of the Complainant due to the fact that the Respondent secretly and illegally took most of the Complainant's assets, and led the Complainant into an insolvency situation. Criminal proceeding, currently at the investigation stage, have been initiated in Latvia against the Respondent for his allegedly infringing activities at the time he was the Complainant's Chairman of the Board of Director).

All the aforementioned statements have either been proved through the Attachments to the Complaint, or have not been challenged by the Respondent. Therefore, the Panel takes the view that the circumstances that the Complainant described in its Complainant are true.

In view of the foregoing, the Panel is inclined to believe that the Respondent was very well aware of the future and short to come Complainant's incorporation under the name SORELEX, when he registered the domain name <sorelex.com>.

Although the disputed domain name was used for a long period as the Complainant's official website, it is not possible to conclude that the registration of <sorelex.com> occurred in good faith. As a matter of fact, the unauthorized registration of a company's domain name in the personal name of one of the company's shareholders and of the company's Chairman of the Board of Directed, rather than in the name of the company's itself, goes against the duties of due diligence and correctness that a shareholder and - even more so - a Chairman of the Board of Directors should comply with. Even if when the <sorelex.com> domain name was registered, the Complainant was not yet incorporated, and therefore the disputed domain name could not be registered in the Complainant's name, the Respondent had not been authorised to register the domain name <sorelex.com> in his own name.

Moreover, it appears that the Respondent omitted to inform the other Complainant's shareholders and members of the Board of Directors that <sorelex.com> was registered in his own name. The Complainant states that "the other shareholders and members of the Complainant's Board of Directors did not pay attention to the fact that the disputed domain name had been registered in the Respondent's name because the domain name <sorelex.com> served as the Complainant's "official" website". In the absence of any contrary statement by the Respondent, the Panellist is inclined to believe that the Complainant's statement is perfectly plausible. The other shareholders and members of the Board of Director of the Complainant did not check in whose name the <sorelex.com> domain name was registered, since this domain name functioned as the official address of the Complainant's website.
Finally, the Respondent did not transfer the <sorelex.com> domain name registration to the Complainant - as he should have done - once the Complainant was incorporated. Considering that simultaneously with the registration and initial use of the domain name at stake the Respondent was also connected to one of the Complainant's competitors (see below), the Respondent's bad faith is even more evident.

Last but not least, from 28 September 1995 to 9 April 2010, therefore, since well before the Complainant's date of incorporation and the registration of the disputed domain name, the Respondent was the sole founder and a shareholder of a company called sabiedriba ar ierobezotu atbildibu "BELTS TROSES", and from 3 December 2003 to 16 April 2010 he acted as Chairman of the Board of Directors of this company. Since this company operates in the same field of activity of the Complainant, it is reasonable to believe, in the absence of any contrary statement by the Respondent, that at the time of registration of the <sorelex.com> domain name in his own name, the Respondent did not act in good faith.

For all the reasons mentioned above, the Panel concludes, that despite the Complainant registered the SORELEX trademark 5 years after the date of registration of the disputed domain name, the Complainant has provided good evidence that the Respondent was well aware of the future incorporation of the Complainant under the SORELEX name, and of the Complainant's intention to use that one in the course of trade, when he registered the disputed domain name.

As far as use in bad faith is concerned, the Panel finds that the Complainant has successfully proved that the Respondent is being using the disputed domain name in bad faith for the following reasons, which the Respondent did not challenge:

- After the revocation of the Respondent's appointment as Chairman of the Board of Directors of the Complainant, the Respondent removed the Complainant's official website, and started using the offending domain name primarily for the purpose of disrupting the business of the Complainant, because the Respondent's obvious intention was to divert (redirect) potential customers of the Complainant to the Respondent's related company's website "www.belts.lv";

- The <sorelex.com> domain name is still used to redirect the Complainant's potential clients to the website "www.belts.lv", which offers goods in competition with the Complainant's goods.

It appears from the foregoing that the Complainant is using the <sorelex.com> domain name to intentionally attract Internet users to a site for commercial gain, by creating a likelihood of confusion with the Complainant's mark. This behaviour is one of the circumstances that indicate use in bad faith (Paragraph 4(b)(iv) of the Policy). The domain name <sorelex.com> redirects to the website <www.belts.lv>, which offers goods in competition with those of the Complainant. It is therefore clear that the Respondent is trying to take advantage of the knowledge or reputation of the Complainant's trademark and activity for his own benefit.

For all circumstances mentioned above, the Panel is satisfied that the Complainant has successfully proved that both the registration and the use of the <sorelex.com> domain name were in bad faith.

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. Although the Respondent did not file an administratively compliant Response to Complaint, the Panel requested an Additional UDRP fee to be paid by the Complainant as it considered the current case to be complex due to the fact that the trademark of the Complainant has been registered after the registration of the disputed domain name. Moreover, the Complainant was also based on other rights different from trademarks that the Panellist had to examine separately. Finally, the disputed domain name had been used for some years as the Complainant's official website.

PRINCIPAL REASONS FOR THE DECISION

The domain name <sorelex.com> is identical to the Complainant's trademark SORELEX, registration No. M 60 866, filed on 03.04.2009 and granted on 20.07.2009.

The Respondent lacks any rights or legitimate interests in the domain name <sorelex.com> according to the evidence proffered by the Complainant, and the Respondent failed to provide any contrary argument in his support.

The Respondent registered and used the <sorelex.com> domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SORELEX.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2013-05-31

Publish the Decision