Decision for dispute CAC-UDRP-101051

Case number	CAC-UDRP-101051
Time of filing	2015-09-08 11:20:11
Domain names	aleniaaeronautica.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FINMECCANICA S.p.A.

Complainant representative

Organization	desimone & partners

Respondent

Name	GIOSAFATTE MARUCCI

OTHER LEGAL PROCEEDINGS

No other proceedings have been notified to the Panel.

IDENTIFICATION OF RIGHTS

The Complainant provided evidence that numerous trademarks (which predate the registration of the disputed domain name) under several Nice Classification categories are registered in favour of the Complainant in a wide range of jurisdictions (i.e. CTM No. 124329 ”Alenia” registered on 6 October 2014 etc.). These marks include the name Alenia or Alenia Aermacchi (earlier Alenia Aeronautica) in Classes 09, 12, 23, 37, 41 and 42. The Complainant has furthermore offered proof of longstanding reputation associated with its main brand.

The rights identified relate primarily to the Complainant’s Alenia brand that has been established globally in the aerospace and defence sectors, notably including aeronautical design, manufacture and maintenance.

FACTUAL BACKGROUND

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

I. PROCEEDINGS

The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered,

incorporates the UDRP. The contested domain name was registered on 22 May 2015. A copy of the WHOIS report and of the domain name dispute policy of the sponsoring registrar ”Crazy Domains” that applies to the domain name in question were provided by the Complainant.

II. FACTUAL BACKGROUND AND EVIDENCE

Finmeccanica S.p.A. (the “Complainant”) is Italy’s leading industrial group in the high technology sector and ranks among the top ten global players in aerospace, defense and security. Finmeccanica is Europe’s leading defense systems company and is well positioned at international level and has a strong presence in the space sector, where it is a pioneer in the satellite services market. Furthermore, the Finmeccanica group has substantial expertise and a well-established position on the global transport and power generation markets. It is a multinational and multicultural group with a clear and recognized reputation for technological excellence which is essential for commanding an international leadership position in the high tech sectors in which it operates. The Finmeccanica group has its headquarters in Italy and has permanent establishments with significant production assets in three domestic markets (Italy, UK and USA) where approximately 85% of the staff of the Finmeccanica group works. The Finmeccanica group has also built up a significant presence in France, Germany and Poland. Finally, it has established a significant network of partnerships in high-potential countries worldwide. In total, it counts more than 70,000 employees, of whom, 43% work abroad in some 50 countries on five continents. The group's international presence has grown constantly in recent years and at present Finmeccanica’ s industrial facilities are spread worldwide with about 350 companies, joint ventures, partnerships and joint industrial projects throughout the world. The technological excellence of its products has made it not only a global competitor, but also a strong partner in several significant international projects. SuperJet 100, Eurofighter, B787 Dreamliner, ATR, Joint Strike Fighter, Galileo and the International Space Station are just a few examples of the partnerships that Finmeccanica has established with major global players in aerospace and defense.

“Alenia” is also part of the company name of AleniaAermacchi, which is a Finmeccanica company. AleniaAermacchi is the Italian leader in aeronautics and among the world’s top players in the design, development, manufacture and support of commercial and military, trainers and unmanned aircraft systems. Through its robust experience in advanced materials, AleniaAermacchi plays primary roles in the leading international civil programmes, for which it manufactures complex aerostructures. The present AleniaAermacchi was formed on 1 January 2012 by the merger between AleniaAeronautica and Aermacchi. The merger created a single industrial entity under the Finmeccanica group, bringing together the heritage of knowledge, technologies and experience gathered in a century of activity by companies that have dominated the Italian aviation industry’s history, including Aeritalia, Fiat Aviazione, Macchi, Romeo and SIAI Marchetti. The collective industrial heritage of these companies is summarized by the almost 30,000 airplanes built from 1913 to the present. A print out of Alenia’s profile from the company’s website was provided by the Complainant as an annex to the Complaint..

III. THE REGISTRANT
The registrant, the respondent in the current reassignment proceedings, Mr. Giosafatte Marucci (hereafter the “Respondent”) is a physical person. The Complainant referred to his name, remarking that it could be Italian and surmising that his elected email address is Roberto Medina, which the Complainant equally surmises is an Italian name, saying that this is of importance given that in this case the reputation of ALENIA is best known to Italians. Evidence provided shows the contested domain name, http://www.aleniaaeronautica.com, points to a default page generated by One.com, which appears to be a web host service provider.

The Complainant claims that the disputed domain name seems to have no other purpose than attracting users to the cited provider, taking advantage on the renown of ALENIA trademark(s).

On 29 July 2015, the Complainant sent via email a warning letter to the Respondent to which he did not reply. The Registrar, ASCIO Technologies Inc. did not reply either to a copy of that letter.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT: Pertinent points of the Complaint's argumentation are addressed in the Principal Reasons for the Decision, below.

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).

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).

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).

PROCEDURAL FACTORS

1. The Panel is satisfied that all procedural requirements under the UDRP were met upon submission by the Complainant of its Amended Complaint and that there is no other reason why it would be inappropriate to provide a decision.

2. The Panel remarks that it is incumbent on a party, when it raises an argument in support of its case, to substantiate it by a sufficiently specific reference to the items of evidence it submits to the Panel. Such reference may be for example by page number in an annex or Non-Standard Communication. It cannot rely on the Panel itself to search for the item(s) in question, meaning that account may not be taken by the Panel of the particular item(s) the party advancing the argument has in mind. This does not imply that a party's case is necessarily jeopardized but it might weaken it. In the present case, failure by the Complainant to guide the Panel to proof of trademark protection in respect of the word "aeronautica" in conjunction with "Alenia" did not jeopardize the Complainant's case because other inferences could be drawn independently, as explained below.

PRINCIPAL REASONS FOR THE DECISION

The Complainant's Alenia brand is famous globally in the sectors in which the Complainant operates, especially in the aeronautics sector. The Complainant furthermore explains that the present AleniaAermacchi company within the Finmeccanica group was formed in 2012 by the merger of AleniaAeronautica and Aermacchi.

The fame of the former's brand "AleniaAeronautica" is of clear pertinence to this case, and, even though the Complainant did not pursue this point specifically in terms of trademark protection, the Complainant did provide sufficient information on the history of the Alenia brand to ground a continuing interest in how the "AleniaAeronautica" brand is used by third parties, namely because "aeronautica" still describes Alenia's business -- as attested to by the almost 30,000 airplanes Alenia has built from 1913 to today. Further, as the Complainant alludes to in its reasoning, the UDRP serves not only to protect rights holders but also consumers in particular. Use of a brand name in a domain name by a third party without right or legitimate interest can thus lead to confusion even if a merger has intervened and a successor brand has emerged, in this case "AleniaAermacchi". The Panel observes in this regard that it may require a considerably longer period than the nearly three and a half years between the merger and registration of the disputed domain name for the successor brand to become very widely known.

The inference can thus easily be drawn that "aleniaaeronautica" relates to the Alenia brand, which continues in being beyond the AleniaAermacchi merger. For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration. Therefore, the disputed domain name and the Complainant's trademarks are confusingly similar.

By contrast, no weight can be attached to the happenstance that the Respondent has an Italian name. What is pertinent from the evidence presented is that nothing appears to link the Respondent to “aleniaaeronautica” in the disputed name by way of right or legitimate interest and, here, the Panel also accords weight, in accordance with decisions of previous panels, to the absence of any response to the warning letter sent to the Respondent by the Complainant or in the present proceedings. Indeed, the case file shows that the Czech Arbitration Court’s own efforts to contact the Respondent have proved fruitless.

The only remaining factor to be considered is therefore the presence or otherwise of bad faith. Despite some of the previous decisions to which the Complainant refers implying a state of knowledge and thus intent to a Respondent, it must be emphasized that the element of bad faith, which the framers of the UDRP chose to include as a conjunctive element, connotes an element of turpitude and should hence not be lightly inferred. However, in the circumstances of this case, in which the contested domain name has been used in combination with a website that may be capable of generating revenue on the basis of traffic attracted due to the fame won by “AleniaAeronautica”, these result in a presumption of bad faith that would require rebuttal. Such rebuttal being lacking since no Response has been submitted and the Respondent himself appears elusive, the Panel is therefore entitled to conclude that bad faith has been established sufficiently.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ALENIAAERONAUTICA.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2015-10-23

Publish the Decision