Decision for dispute CAC-UDRP-102927

Case number	CAC-UDRP-102927
Time of filing	2020-03-05 09:27:05
Domain names	besix-belgium.com

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 has supplied details of a criminal complaint it has filed under Belgian law (pertaining to an unknown party, X) on 27 November 2018. This Complaint relates to other domain names (which may form part of the same allegedly fraudulent activity), and of course predates both the registration of the disputed domain name and the filing of the present Complaint. These proceedings are, according to the Complainant, at an early stage.

There have been various other proceedings under the Policy, involving the Complainant and in some cases the Respondent, which relate to other domain names. These decisions are referred to within the present decision.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of the Benelux trade mark 'BESIX' (0872629, registered on 10 February 2010), a figurative mark in the European Union with 'BESIX' as a dominant element (1039445, registered on 14 April 2010), and a mark under the Madrid international system valid in various other territories (1039445, also registered on 14 April 2010) and various other marks. These marks typically subsist in classes including 37 (construction) and 42 (scientific, technological, and engineering services).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Belgium, is active at a significant scale in the field of the construction of buildings and infrastructure. It was founded in 1909, is very well known in Belgium and elsewhere, and now operates across

the world, in all continents. It operates various websites of its own, at domain names including <BESIX.COM>.

The Respondent, an individual with an address in Belgium, registered the disputed domain name on 11 February 2020.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Provider. An e-mail sent to the Respondent was successfully relayed, and the Respondent never accessed the online platform.

The Complainant submits that the conditions set out in the Policy have been satisfied and that the disputed domain name should be transferred to it. These submissions are accompanied by evidence, including material relating to the Complainant's argument that fraudulent activity is taking place in connection with the disputed domain name.

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).

The Complainant has provided evidence of various marks relating to the string BESIX, all of which predate the registration of the disputed domain name by a decade. The disputed domain name differs from these marks in two respects. The first, the generic TLD .com, is disregarded as is normally the case in respect of the Policy. The second difference is the addition of a hyphen and the string BELGIUM. This is therefore a case where the disputed domain consists of a mark and a geographical term, which (as set out for instance in WIPO Jurisprudential Overview, version 3.0, para 1.8: 'the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element'). The Panel can safely find that the disputed domain name is confusingly similar to the mark, especially in light of the Complainant's foundation and continuing presence in the country of Belgium.

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).

The Complainant declares that it has no legal or business relationship with the Respondent, and that it has never granted a licence to the Respondent to use its trade mark. It notes various unsuccessful attempts to contact the Respondent (in these proceedings and, it alleges, the same person in other proceedings).

The Respondent has not participated in these proceedings, and there is no active website utilising the disputed domain name. The Panel notes that the Respondent's name is (the Complainant says purports to be) 'Michael Hannart' with an address in Belgium, and that there is no evidence on the record, nor capable of being plausibly assumed by the Panel, regarding how or why this individual would be engaged in the exercise of rights or legitimate interests using the disputed domain name.

Various submissions are made by the Complainant regarding the activities of the Respondent. As the Panel is already satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and these arguments (which have not been contradicted by the Respondent) would only strengthen the implausibility of the presence of rights or legitimate interests, these submissions are addressed more fully under bad faith, below. The Panel would, however, have placed further weight upon these submissions, which are supported by evidence, had it been necessary to do so.

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).

In this case, the Complainant has supplied evidence of apparently fraudulent use of the disputed domain name by the Respondent. This consists of the generation of e-mails to third parties purporting to emanate from the Complainant, but in fact generated by the Respondent in order to seek payments to which the Respondent is not entitled. The Complainant contends that this is an extensive scheme, which has seen the utilisation of various domain names (some of which have been the subject of past proceedings at this Provider (CAC Case 102573 Besix Group v Michael Hannert, CAC Case 102767 Besix Group v Laurent Peters) and elsewhere (decision of CEPANI in respect of the TLD .be, Case 44478 Besix Group SA v Laurent Peters). The Panel has considered this evidence, which is extensive, and properly enumerated and presented, and accepts the Complainant's submission, and so the presence of bad faith.

Specifically, the evidence shows that the Respondent, or someone acting under the control or authorisation of the Respondent, has generated e-mail addresses that are highly likely to mislead a recipient as to the identity of the sender. For instance, e-mail addresses corresponding to the real names of employees of the Complainant are used (or in some cases are generic addresses e.g. orders@), and the text of messages (supplied by the Complainant) also read as if they are written on behalf of the Complainant, including the use of logos, colour schemes, and the like, as well as real names of employees, which reinforce this impression. These messages are, in some cases, sent to existing business contacts of the Complainant, purporting to place an order. The Panel notes that the evidence supplied by the Complainant relates to a number of domain names (including the disputed domain name), and that the evidence in respect of the disputed domain name alone is sufficient for the purposes of this decision (though there is at least an arguable case in respect of the use of the various domain names by a single party or by parties acting in concert). Moreover, one of the earlier decisions (CAC Case 102573), handed down in December 2019, is recorded as concerning the same Respondent (although the Complainant believes that this may itself be false information).

The Panel also notes that the Complainant is a well-known company in its sector, and in particular that it has a close and continuing connection to Belgium; the Respondent choosing to combine the name of a well-known Belgian company with the string BELGIUM points to the Respondent's prior awareness of the Complainant and its marks.

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.

The Panel accepts the Complainant's request (Nonstandard Communication, 11 March 2020) that the language of these proceedings be English, despite the language of the registration agreement being French. The Respondent has not participated in these proceedings and so has expressed no view on the choice of language. The Complainant contends that the Respondent understands English (evidenced through the e-mails that formed part of the materials discussed above), and makes various other arguments regarding the convenience of English as the language of proceedings. The Panel notes that the Complaint is in English, and that the Annexes are in English, French, and (in respect of original messages forming part of the record of allegedly fraudulent emails) various other languages.

(See Rules, paragraph 11(a): unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding').

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark BESIX, and that the disputed domain name is confusingly similar to this mark (differing only by the addition of a hyphen and the text BELGIUM). In light of the extensive and compelling evidence presented by the Complainant, the Panel finds that the disputed domain name was registered and is being used in bad faith, noting in particular the volume of material which appears to show fraudulent activity - that is, impersonation of the Complainant in e-mail messages intended to secure financial gain for the Respondent. The

requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2020-04-13

Publish the Decision