

Decision for dispute CAC-UDRP-105222

Case number CAC-UDRP-105222

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Domain names spiebatignolles.pro

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization SPIE BATIGNOLLES

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Jean Vuibert

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 <spiebatignolles.pro>.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks, "SPIE BATIGNOLLES" such as:

- International trademark registration SPIE BATIGNOLLES n° 535026 registered since February 17, 1989;
- European trademark registration SPIE BATIGNOLLES n° 3540226 registered since October 31, 2003; and
- French trademark registration SPIE BATIGNOLLES n° 1494661 registered since October 19, 1988.

The Complainant is also the owner of domain names, including the distinctive wording SPIE BATIGNOLLES, such as <spiebatignolles.fr> registered on July 29, 2004 and <spiebatignolles.com> registered on April 27, 2009.

FACTUAL BACKGROUND

The Complainant is a French construction company based in Neuilly-sur-Seine. The company provides building and infrastructure construction in France, Germany, the United Kingdom, Spain, Portugal and Switzerland.

The disputed domain name <spiebatignolles.pro> was registered on February 19, 2023, and redirects to a parking page with commercial links.

PARTIES CONTENTIONS

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

I. The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <spiebatignolles.pro> is identical to its trademarks and branded services SPIE BATIGNOLLES. The disputed domain name includes it in its entirety.

In addition, the Complainant contends that the addition of the New generic Top-Level Domain suffix “.PRO” does not change the overall impression of the designation as being connected to the trademark SPIE BATIGNOLLES of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated and refers to the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

II. The Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant also contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark SPIE BATIGNOLLES, or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant provides that the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

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

According to the Complainant, the disputed domain name <spiebatignolles.pro> is identical to its trademarks. The Respondent has registered the disputed domain name several years after the registration of the trademark SPIE BATIGNOLLES by the Complainant, which has established a strong reputation while using this trademark. Besides, all the Google results for the denomination SPIE BATIGNOLLES refer to the Complainant.

Given the distinctiveness of the Complainant’s trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant’s trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his website thanks to the Complainant’s trademarks for its commercial gain, which is evidence of bad faith.

Finally, the Complainant states that the MX servers are configured, which suggests that the disputed domain name may be actively used for email purposes.

RESPONDENT:

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 UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of the SPIE BATIGNOLLES trademarks.

The Panel finds that the disputed domain name <spiebatignolles.pro> fully incorporates the Complainant's SPIE BATIGNOLLES trademark. Previous UDRP panels have found that the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for the purposes of the Policy (see, e.g., Oki Data Americas Inc. v ASD, Inc., WIPO Case No. D2001-0903).

Additionally, the disputed domain name not only fully incorporates the SPIE BATIGNOLLES trademark but also includes a New generic top-level domain ".PRO" which according to previous UDRP panels is not to be taken into account when assessing whether a domain name is identical or confusingly similar to a trademark.

The Panel finds that the disputed domain name <spiebatignolles.pro> shows a clear visual, phonetic and conceptual resemblance to the Complainant's SPIE BATIGNOLLES trademark, and could confuse Internet users into thinking that the disputed domain name is associated with the Complainant or its trademarks.

In these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark SPIE BATIGNOLLES for the purposes of the first element of the Policy.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production 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 Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent has no legal right to use the SPIE BATIGNOLLES mark as part of its domain name. The Respondent is not affiliated with the Complainant, nor is it authorized to register the disputed domain name. The disputed domain name <spiebatignolles.pro> resolves to a parking page with commercial links. This, according to the Panel, is not a use indicative of rights or legitimate interests.

In the present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus believes that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the second element of the Policy.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its trademark SPIE BATIGNOLLES is distinctive. The registration of the Complainant's well-known trademark SPIE BATIGNOLLES predates the registration of the disputed domain name. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Panel finds that such actions constitute bad faith pursuant to paragraph 4(b)(iv) of the Policy, which provides: "by using the domain name, respondent has intentionally attempted to attract, for commercial gain, Internet users to respondent's web site 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 respondent's web site or location or of a product or service on respondent's web site or location."

The fact that the Respondent has registered the disputed domain name that is identical to them indicates, and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant's trademark and that it had such knowledge before the registration and use of the disputed domain name.

The fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel finds that the Complainant's trademarks are distinctive and well-known, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

Further, the disputed domain name <spiebatignolles.pro> resolves to a parking page with commercial links. The Panel believes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or location by creating a likelihood of confusion with the Complainant's mark. This further suggests that the Respondent's sole intention in registering the disputed domain name was to take unfair advantage of the Complainant's SPIE BATIGNOLLES mark and reputation and suggests registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed 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. **spiebatignolles.pro**: Transferred

PANELLISTS

Name	Barbora Donathová
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DATE OF PANEL DECISION **2023-03-23**

Publish the Decision
