

Decision for dispute CAC-UDRP-105188

Case number **CAC-UDRP-105188**

Time of filing **2023-02-10 09:17:51**

Domain names **BelronCanada.org**

Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization **Belron International Limited**

Complainant representative

Organization **HSS IPM GmbH**

Respondent

Name **Alexandre Hétu**

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 holder of various registered trademarks including the following:

- Canadian word mark BELRON registered under TMA685627 since April 5, 2007, covering goods and services in classes 3, 12, 16, 17, 21 and 37;
- Canadian word mark BELRON CANADA registered under TMA539670 since January 15, 2001, covering goods and services in classes 3, 7, 10, 12, 19, 21 and 37.

FACTUAL BACKGROUND

The Complainant, Belron International Limited, is part of the Belron Group which is globally active in vehicle glass repair and replacement. The Belron Group has approximately 29,000 employees and operates across over 35 countries and 6 continents, including in Canada where the Respondent appears to be located.

The Complainant is the owner of the registered Canadian word marks BELRON and BELRON CANADA in several classes since 2007 and 2001 respectively. The Complainant and related entities of the Belron Group also own domain names such as <belron.com> and <belroncanada.com>, which resolve to official websites of the Belron Group.

The disputed domain name <belroncanada.org> has been registered on January 19, 2023, and appears to be inactive.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be identical or confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant:

- there is no evidence of any use of the disputed domain name in connection with a bona fide offering of goods or services;
- the Respondent is not commonly known by the disputed domain name, has no connection to the Complainant and has not been authorized to use the Complainant's trademarks;
- there is no evidence that the Respondent has made any known legitimate, non-commercial use of the disputed domain name.

Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that it is reasonable to infer that the Respondent knew or should have known of the Complainant's mark at the time of registration. The Complainant further believes that there is a threat of phishing and that there can be no good reason to impersonate the Complainant through the use of the disputed domain name.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Taking into account the procedural issue addressed below, 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.

Procedural issue: Language of proceedings

Pursuant to the Rules, Paragraph 11, in the absence of an agreement between 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.

According to information received from the Registrar, the language of the registration agreement for the disputed domain name is French. The Complainant requests that the language of the proceedings is English.

Previous UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include:

- evidence showing that the respondent can understand the language of the complaint;
- potential unfairness or unwarranted delay in ordering the complainant to translate the complaint;

- other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The Panel notes that the Respondent is located in Canada, where one of the official languages is English and the use of the English language is widespread. In addition, in view of the absence of any Response or other communication from the Respondent, the Panel finds that it would be a disadvantage for the Complainant to be forced to translate the Complaint. For these reasons and given the circumstances of this case as further explained below, the Panel determines that the language of the proceedings is English.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The 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.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered BELRON and BELRON CANADA trademarks, which is used in connection with the Complainant's vehicle glass repair and replacement business, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <belroncanada.org> incorporates the Complainant's BELRON CANADA trademark in its entirety, merely removing the space between both terms in the trademark. In the Panel's view, such removal can also be considered as a purely technical requirement as a domain name cannot contain a space.

Additionally, it is well established that the Top Level Domains ("TLDs") such as ".org" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name <belroncanada.org> is virtually identical to the Complainant's trademark. Accordingly, the Complainant have made out the first of the three elements that they must establish.

2. No rights or legitimate interests

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 disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling* (45FHH), WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Whois records relating to the disputed domain name indicate that the Respondent is known as "Alexandre Héту". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). The disputed domain name being virtually identical to the Complainant's BELRON CANADA trademark, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute fair use in the

circumstances of this case.

Moreover, the Panel observes that the disputed domain name appears to be inactive, and neither the Respondent nor the facts of the case indicate any demonstrable preparations to a good faith use of the disputed domain name. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain names (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Facebook, Inc. v. Mirza Azim*, WIPO Case No. D2016-0950; *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. D2000-1602; and *Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci*, WIPO Case No. D2000-1244).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the BELRON and BELRON CANADA trademarks at the moment it registered the disputed domain name:

- the Complainant's BELRON and BELRON CANADA marks are registered in Canada, where the Respondent is located, and predate the disputed domain name by at least 15 years. The Complainant's distinctive BELRON CANADA trademark predates the disputed domain name by more than 20 years;
- the disputed domain name is virtually identical to the Complainant's BELRON CANADA trademark;
- the reputation of the Complainant's BELRON trademark has been confirmed by previous UDRP panels (see, *g.*, *Belron International Limited v. Andrea Paul*, CAC Case No. 103381).

The Panel observes that the Respondent is not presently using the disputed domain name. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain names may be put (see section 3.3 WIPO Overview 3.0).

In the present case, the Panel is of the opinion that several of the above factors apply:

- the Panel finds that the Complainant's BELRON and BELRON CANADA trademarks are distinctive and enjoy a reputation in Canada, where the Respondent is located;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- given the virtual identity with the Complainant's mark, the Panel finds it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

Moreover, the Complainant provides evidence that the email function of the disputed domain name has been enabled. In the circumstances of this case, the Panel finds that the use of the disputed domain name for fraudulent activity cannot be excluded, *e.g.* by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities through the sending of emails.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BelronCanada.org**: Transferred

PANELLISTS

Name **Flip Petillion**

DATE OF PANEL DECISION 2023-03-28

Publish the Decision