Decision for dispute CAC-UDRP-106218

Case number	CAC-UDRP-106218
Time of filing	2024-02-01 09:54:33
Domain names	maisonsbatigere.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BATIGERE HABITAT

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Davi Davi

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 owner of the trade mark “BATIGERE”, registered as European trademark BATIGERE n° 002204113 since August 20th, 2002.

The Complainant also owns the domain names <batigere.fr> registered on September 29, 1999, and <batigere.com> registered on June 5, 2007.

FACTUAL BACKGROUND

Founded in 1947, The Complainant is a French company trading in housing in France.

The disputed domain name <**maisonsbatigere.com**> was registered on September 10, 2023 and resolves to a blank page.

PARTIES CONTENTIONS

COMPLAINANT:

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

The disputed domain name <**maisonsbatigere.com**> is confusingly similar to the Complainant's prior trademark BATIGERE incorporating it in its entirety.

The addition of the generic term “maisons” (meaning “houses” in French), referring to the Complainant’s activities, is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. It does not change the overall impression of the disputed domain name being connected to the Complainant’s trademark.

Thus, there is a likelihood of confusion between the disputed domain name and the Complainant’s trademark.

The addition of the gTLD “.com” does not change the overall impression of the disputed domain name as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

See the WIPO Overview 3.0 §1.11.1, “the applicable Top Level Domain (“TDL”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test”.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark BATIGERE.

B. The Respondent has no rights or legitimate interests in respect of the domain name

The 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 Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Respondent is not commonly known by the disputed domain name as shown by the WhoIS. Past panels have held that a Respondent was not commonly known by a domain name if the Whois information was not similar to that domain name. Thus, the Respondent is not commonly known as the disputed domain name.

The Respondent has no rights or legitimate interests in respect of the disputed domain name <**maisonsbatigere.com**> and is not related in any way to the Complainant’s business.

The Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way to use the trademark BATIGERE. The Respondent does not carry out any activity for, and does not have any business with the Complainant.

The disputed domain name resolves to a blank page The Respondent has not made any use of disputed domain name, and has no demonstrable plan to use the disputed domain name. This shows a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

C. The domain name was registered and is being used in bad faith

Given that the disputed domain name <**maisonsbatigere.com**> is confusingly similar to the Complainant's distinctive trademark BATIGERE and the Complainant operates in France in housing, the use of the distinctive term “BATIGERE” in conjunction with the French term “MAISONS” cannot be coincidental.

Top results from a Google search on the terms “MAISONS BATIGERE” refer to the Complainant and its trademark.

Since the disputed domain name resolves to a blank page the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated use of the domain name by the Respondent that would not be illegitimate, such as by being passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

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 disputed domain name registered in 2023 is confusingly similar to the Complainant's trademark BATIGERE (registered as European trademark n° 002204113 since August 20th, 2002) adding only the general French word 'maisons' meaning houses and the gTLD .com which do not prevent said confusing similarity.

The Respondent is not authorised by the Complainant or commonly known by the disputed domain name. There has been no use of the disputed domain name so no legitimate non commercial use or bona fide offering of goods or services.

The Respondent has not answered the Complaint or rebutted the prima facie case evidenced by the Complainant.

The disputed domain name containing a mark with a reputation is being passive held without legitimate explanation. Because of the confusing similarity of the disputed domain name the Panel found that the Respondent had the Complainant in mind when registering the disputed domain name. The Panel did not find any possible good faith use of the disputed domain name by the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **maisonsbatigere.com**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2024-02-22

Publish the Decision