Decision for dispute CAC-UDRP-106660

Case number	CAC-UDRP-106660
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Domain names	saint-gobaint.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	COMPAGNIE DE SAINT-GOBAIN

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	TYREMART ALLENSNEK

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 owns the registered trademark SAINT-GOBAIN registered worldwide, such as:

- European trademark SAINT-GOBAIN no. 001552843 registered since March 9, 2000;
- International trademark SAINT-GOBAIN no. 740184 registered on July 26, 2000;
- International trademark SAINT-GOBAIN no. 740183 registered on July 26, 2000;
- International trademark SAINT-GOBAIN no. 596735 registered on November 2, 1992;
- International trademark SAINT-GOBAIN no. 551682 registered on July 21, 1989.

The Complainant also owns many domain names including its trademark SAINT-GOBAIN, such as the domain name <saint-gobain.com> registered on December 29, 1995.

FACTUAL BACKGROUND

The Complainant is a French company specialised in the production, processing and distribution of materials for the construction and industrial markets.

It asserts to be a worldwide reference in sustainable habitat and construction markets. It takes a long-term view in order to develop

products and services for its customers that facilitate sustainable construction. In this way, it designs innovative, high-performance solutions that improve habitat and everyday life.

For 350 years, the Complainant has consistently demonstrated its ability to invent products that improve quality of life. It is now one of the top industrial groups in the world with around 47.9 billion euros in turnover in 2023 and 160,000 employees.

The disputed domain name <saint-gobaint.com> was registered on June 18, 2024 and redirects to a parking page. It appears that MX servers have been configured.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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).

The Complainant asserts rights in the SAINT-GOBAIN trademark, which is registered worldwide. The Panel finds the Complainant has established rights in the SAINT-GOBAIN trademark through its trademark registrations as demonstrated by the evidence adduced. The Complainant's trademark registrations in various jurisdictions also predate the registration date of the disputed domain name.

The question is whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant contends that the disputed domain name is confusingly similar to its well-known and distinctive trademark SAINT-GOBAIN.

Whether a disputed domain name is identical or confusingly similar to a trademark can be determined by making a side-by-side comparison with the disputed domain name. See F. Hoffmann-La Roche AG v. P Martin, WIPO Case No. D2009-0323.

A disputed domain name is identical to the trademark when it is a character for character match. It is confusingly similar when it varies the trademark by, for example, adding generic terms to the dominant part of the trademark.

Here, the disputed domain name incorporates the Complainant's SAINT-GOBAIN trademark in its entirety, with the addition of the letter "T" at the end of the trademark.

The Complainant contends that the obvious misspelling of the Complainant's trademark by the addition of the letter "T" is characteristic of a typo-squatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. The Panel agrees.

The disputed domain name is a character-for-character match until the single letter "T" added to the Complainant's trademark. The primary element of the domain name, "SAINT-GOBAIN", is clearly identical to the Complainant's well-known trademark. The addition of "T" does not mitigate the risk of confusion. On the contrary, the Panel considers this as a clear indication of typo-squatting.

Accordingly, the Panel accepts the Complainant's contention that the disputed domain name is confusingly similar to its trademark.

It is also trite to state that the addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that this ground is made out.

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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. See Document Technologies, Inc. v. International Electronic Communications Inc, WIPO Case No. D20000270.

If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See Croatia Airlines d.d.

v. Modern Empire Internet Ltd, WIPO Case No. D2003-0455.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts as follows:

- It is not related in any way with the Complainant.
- It does not carry out any activity for, nor has any business with the Respondent.
- It has not granted a licence nor authorised the Respondent to make use of the Complainant's trademark or apply for the registration of the disputed domain name.
- The Respondent did not make any use of the disputed domain name, and has no demonstrable plain to use the disputed domain name. The disputed domain name is on a parking page.

The inference to be drawn from the alleged conduct of the Respondent is that it is attempting to take advantage of internet users' typographical errors which evidences its lack of rights and legitimate interests in the disputed domain name.

The Panel accepts the uncontradicted assertions put forward by the Complainant that the Respondent is not related in any way with the Complainant, nor has the Complainant licensed or authorised the Respondent to use the SAINT-GOBAIN trademark. Further, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Respondent has clearly not seized on the opportunity in this proceeding to provide any evidence of legitimate non-commercial or fair use of the disputed domain name.

On the other hand, the Complainant has submitted evidence showing that the Respondent's website resolves to a parking page. The Panel considers that such conduct does not constitute a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name.

The Panel is prepared to consider the following matters in favour of the Complainant:

- The evidence adduced by the Complainant of its portfolio of trademarks and wide reputation which the Panel accepts as evidencing the strength of its reputation
- The lack of any administratively compliant response from the Respondent.
- The lack of evidence of any legitimate use of the disputed domain name.

The Panel accepts and finds that the Respondent has no rights or legitimate interests to the disputed domain name.

Accordingly, the Panel considers that this ground is made out.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that 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).

The Complainant must demonstrate that the disputed domain name was registered and is being used in bad faith.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith for the following reasons:

- The disputed domain name was created quite recently, i.e., June 18, 2024.
- The Complainant was already extensively using its trademark worldwide well before the registration date of the disputed domain name.
- The Complainant trademark has a well-known character worldwide and has a long-standing worldwide operating website under the <saint-gobain.com>, and as such the Respondent obviously knew of the prior rights and wide use of the Complainant's trademark.
- The misspelling of the Complainant's trademark was intentionally designed to be confusingly similar with the Complainant's trademark, and this action evidence bad faith.
- The disputed domain name redirects to a parking page, and as such has not demonstrated any activity in respect of the disputed domain name.
- There is no plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.
- The incorporation of the Complainant's famous trademark into the disputed domain name coupled with an inactive website is evidence of bad faith registration and use.
- The disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes. This is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose.

The Panel accepts the uncontradicted evidence of the Complainant's well-known brand, its international trademark registration, its global presence and reputation.

Accordingly, the Panel is prepared to infer that the Respondent has been fully aware of the Complainant, its SAINT-GOBAIN

trademark when registering the disputed domain name.

The Panel is also prepared to draw the adverse inference that the Respondent registered the disputed domain name incorporating in its entirety the Complainant's trademark intentionally to take advantage of the Complainant's reputation and business goodwill.

The Panel also accepts the Complainant's uncontradicted assertion that the Respondent cannot claim any rights or legitimate interests in the disputed domain name.

In response to the CAC's notification to the Respondent of this proceeding, the Panel notes the communication from a person using the official registration e-mail (as confirmed by the registrar in verification), denying knowledge or involvement with the disputed domain name, and asserts fraudulent use of the official registration e-mail. These e-mail exchanges are set out in the Procedural Section.

The Panel is unable to determine the veracity of this assertion.

The fact remains, however, that the Respondent for its own reasons has not responded by filing an administrative compliant response despite having contacted the CAC regarding the proceeding. The irrefragable inference is that the Respondent has chosen to ignore the proceeding, and accordingly the Panel is prepared to accept this conduct as indicating bad faith by the Respondent.

The Panel finds that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

Accordingly, the Panel accepts that the disputed domain name was registered by the Respondent and used in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On July 24, 2024 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

"Written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware whether the written notice was received by the Respondent or not.

The e-mail notice was sent to <postmaster@saint-gobaint.com>, and to <rozanne@actgroup.co.za> but we never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site."

On July 24, 2027 an e-mail was sent by the user with the e-mail address rozanne@actgroup.co.za to the CAC. On July 25, 2024 CAC responded as follows:

"according to Registrar - you are the registrant of the domain name <saint-gobaint.com>. There is a UDRP dispute regarding this domain name held before the CAC, you are listed as a Respondent in this dispute. The Complainant, COMPAGNIE DE SAINT-GOBAIN requests the transfer of this domain name to themselves.

In this dispute a panel who will decide the case was already appointed, you have not provided any reply.

If you wish to fill in your statement regarding the domain name registration, it is necessary to log in to online case file. If that is a problem, let us know and we will provide you all necessary documentation."

On July 25, 2024, the user with the e-mail address rozanne@actgroup.co.za e-mailed the CAC, as follows (omitting irrelevant parts):

"Please supply me with the documentation as I can't see the documentation as I do not have an account to log in please.

I can not recall that I have ever done anything like this but sent to me let me see, please."

On July 25, 2024 the CAC responded to the e-mail (omitting irrelevant parts):

"please find attached the complaint in this dispute.

Also you can register to the online case file via this link and review all documents in the case"….."

The CAC received another response from the user as follows:

“My name is not Danie Grove so you do have the wrong person here.

Please remove this email address.

I also do not know a Danie Grove, please contact him, I see there is a Company Name Tyremart Allansnek, dis person is fraudulent and using my email address.”

From the above e-mail exchanges, the user with the e-mail address rozanne@actgroup.co.za has not proffered her real identity but denies being the person named “Danie Grove” in the Amended Complaint. She also denies any involvement with the disputed domain name and alleges fraudulent use of the email address by unknown persons. The Panel can only make note of these matters as raised by the said user.

The Respondent never accessed the online platform nor provided any further responses.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, 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 Complainant owns the trademark SAINT-GOBAIN, and several domain names with the SAINT-GOBAIN trademark, including <saint-gobain.com> which are used in connection with its goods or services.

The Respondent registered the disputed domain name <saint-gobaint.com> on June 18, 2024.

The disputed domain name was registered after the Complainant’s trademark SAINT-GOBAIN and after the domain names owned by the Complainant.

The Complainant challenges the registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent failed to file any administratively compliant response.

For the reasons articulated in the Panel’s reasons above, the Complainant has satisfied the Panel of the following:

(a) The disputed domain name is confusingly similar to the Complainant’s widely known trademark.

(b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

(c) The disputed domain name has been 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. **saint-gobaint.com**: Transferred

PANELLISTS

Name	**William Lye OAM KC**

DATE OF PANEL DECISION 2024-07-30

Publish the Decision