Decision for dispute CAC-UDRP-106744

Case number	CAC-UDRP-106744
Time of filing	2024-07-26 10:12:07
Domain names	spiebatignollesgroup.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	SPIE BATIGNOLLES

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Esposito Julian

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks for “SPIE BATIGNOLLES” such as:

International trademark registration “SPIE BATIGNOLLES” no. 535026 registered since February 2, 1989;

European trademark registration “SPIE BATIGNOLLES” no. 3540226 registered since December 5, 2006;

French trademark registration “SPIE BATIGNOLLES” no. 1494661 registered since October 19, 1988.

FACTUAL BACKGROUND

The Complainant is a leading French company providing building and infrastructure construction in several countries. In 2023, its sales amounted to 2700 million euros.

The Complainant is also the owner of several domain names, including with the term “SPIE BATIGNOLLES”, such as <spiebatignolles.com> registered on April 27, 2009.

The disputed domain name was registered on July 23, 2024 and redirects to a parking page. Besides, MX servers are configured.

PARTIES CONTENTIONS

COMPLAINANT:

A. Identical or confusingly similar to a trademark

The Complainant states that the disputed domain name is confusingly similar to its trademark “SPIE BATIGNOLLES” as it is identically reproduced.

The addition of the generic term “GROUP” referring to the structure of the Complainant is not sufficient to avoid the likelihood of confusion with the Complainant, its trademarks and domain names. It is well established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”.

Moreover, it is well established that TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark “SPIE BATIGNOLLES”.

B. No rights or legitimate interests

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

Neither licence 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.

Furthermore, the disputed domain name resolves to a parking page. The Complainant contends that Respondent did not make any use of disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It proves 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.

Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and is being used in bad faith

The disputed domain name is confusingly similar to the Complainant's trademark “SPIE BATIGNOLLES”. 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.

Past panels have recognized the reputation of the Complainant’s trademark.

Besides, most results for the denomination “SPIE BATIGNOLLES GROUP” refer to the Complainant and its subsidiary.

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. The Complainant contends that 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 active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the “SPIE BATIGNOLLES” trademarks, with registration and evidence provided dating the trademark registration back to 1988.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark. The disputed domain name reproduces the trademark in its entirety, namely “SPIE BATIGNOLLES”, with the only differences being that there is no space between the two elements of the trademark. This slight difference, which can be attributed to the technical nature of domain names, and the second being the addition of the term “group” after the trademark. These differences are immaterial and, therefore, insufficient to dispel the confusing similarity between the trademark and the disputed domain name.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain name; b) the Respondent is not affiliated to the Complainant; c) the Respondent is not authorized to carry out any business activity for the Complainant; d) the Respondent has no license or authorization to use the trademarks; e) the disputed domain name resolves to a parking page; and f) the disputed domain name appears to have active MX records for e-mail capabilities.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, indicates, if nothing else, a likely intention of confusing Internet users with a likely implied association with the Complainant through appearing to be a formal channel of the Complainant, as it reproduces the entirety of the Complainant’s trademark, with the addition of the term “group” which under certain circumstances could enhance the appearance of being linked to the Complainant. However, this will be the subject of further analysis under the last element.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that the “SPIE BATIGNOLLES” trademark predates the registration of the disputed domain name as well as the global reputation of the “SPIE BATIGNOLLES” mark indicates that the Respondent knew or should have known about the Complainant's rights when registering the disputed domain name.

Additionally, this conclusion is supported by the fact that the Respondent seems to have active MX records with the capability to use e-mail service associated to the disputed domain name, which could indicate the potential for phishing appearing as a formal channel of the Complainant, especially bearing in mind that the disputed domain name reproduces the trademark in its entirety, with the addition of the term “group”. These circumstances can lead the Panel to believe that the Respondent meant to take advantage of the perceived connection between the disputed domain name and the trademark for its benefit.

Without any visible explanation in disputed domain name regarding its association to the Complainant, the Panel is left with no other option than to consider the conclusion that the Respondent, appears to misrepresent a link between the disputed domain name and the Complainant. In the case at hand, as the record supports, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.
In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **spiebatignollesgroup.com**: Transferred

PANELLISTS

Name	**Rodolfo Rivas Rea**

DATE OF PANEL DECISION 2024-08-16

Publish the Decision