

Decision for dispute CAC-UDRP-104402

Case number	CAC-UDRP-104402
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Time of filing	2022-03-09 09:14:31
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Domain names	besix.cam
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Case administrator

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

Organization	Besix Group
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Complainant representative

Organization	Mr. Etienne Wéry (Ullys)
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Respondent

Name	Lin Chen
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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.

The Complainant filed a criminal complaint with the police and an investigating judge (juge d'instruction) regarding fraudulent activities through e-mail addresses, but the Panel observes that this criminal complaint predates the registration date of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant invokes several registered trademarks in this case, including the following:

- BESIX, Benelux word mark No. 0872629 registered since November 23, 2009 in classes 35, 36, 37, 40 and 42;
- BESIX, international figurative mark No. 1039445 registered since April 14, 2010 in classes 35, 36, 37, 40 and 42, and covering various countries.

FACTUAL BACKGROUND

The Complainant, Besix Group, is a leading Belgian group in the construction sector. Active since 1909, the group is based in Brussels and operates in Europe, the Middle East, Oceania, Africa, North America and Asia. In 2018, BESIX had a turnover of

2.54 billion euros and 15,000 employees worldwide.

The Complainant owns several registered trademarks corresponding to or including the term BESIX, covering various countries worldwide. The Complainant also claims to be the owner of several domain names corresponding to or including the term BESIX. The Panel observes that the domain name <besix.com> refers to the Complainant's official website.

The disputed domain name <besix.cam> was registered on February 6, 2022 and does not appear to refer to an active website. The Complaint provides evidence of the use of e-mail addresses linked to the disputed domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks 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, the Respondent has no legal relation nor business relationship with the Complainant, is not commonly known by the disputed domain name and does not have any registered right corresponding to the disputed domain name. Also, according to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use but rather for illegal activity. Finally, the Complainant considers that the disputed domain name has been registered and is used in bad faith. The Complainant contends that the Respondent must have known of the Complainant when registering the disputed domain name. According to the Complainant, the Respondent's apparent intention of disrupting the business of the Complainant, through contacting its co-contractors under the identity of the Complainant but using a different e-mail address to place fraudulent orders, should be interpreted as an attempt to knowingly create a risk of confusion between the Respondent and the Complainant.

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

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

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 or 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 several trademarks corresponding to the term BESIX or including this term as the dominant part of a trademark, which are used in connection with its construction business, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <besix.cam> incorporates the Complainant's BESIX trademark in its entirety.

It is well established that the Top Level Domains ("TLDs") such as ".cam" 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 is identical to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it 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. According to the information provided by the Registrar, the Respondent is "Lin Chen". 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. Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see sections 2.5 and 2.5.1 of the WIPO Overview 3.0). The disputed domain name incorporates the Complainant's BESIX trademark in its entirety without any addition. Moreover, the Panel observes that the disputed domain name differs by only 1 letter from the domain name <besix.com> which refers to the Complainant's official website. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In fact, the Respondent is not making any use of the disputed domain name in connection with an active website.

Although some arguments of the Complainant relate to domain names other than the disputed domain name, the Complainant provides evidence of use of 3 email addresses linked to the disputed domain name. The Panel observes that these e-mail addresses are copied in some e-mails, so there is no evidence of emails actually sent from these e-mail addresses. However, according to the Complainant, these e-mail addresses include names of employees of the Complainant. In the Panel's view, this does not indicate any good faith use of the disputed domain name.

The Respondent had the opportunity to demonstrate his 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

The Complainant must prove on the balance of probabilities that the disputed domain name has been registered in bad faith and is 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 it inconceivable that the Respondent was not aware of the Complainant's rights at the moment it registered the disputed domain name. The Complainant's BESIX mark has been registered in various countries more than a decade before the registration of the disputed domain name. The disputed domain name incorporates the Complainant's widely used mark in its entirety without any addition and differs by only 1 letter from the domain name <besix.com> which refers to the Complainant's official website.

The Panel observes that the disputed domain name does not refer to an active website. The passive holding of a domain name may amount to bad faith when it is difficult to imagine any plausible future active use of a domain name by the respondent that would be legitimate and would not interfere with the complainant's well-known mark (see Inter-IKEA v. Polanski, WIPO Case No. D2000-1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000-0438; Telstra Corporation Limited v. Nuclear Marshmallows, supra). Additional factors to support a finding of bad faith in relation to the passive holding of a domain name include the degree of distinctiveness or reputation of the complainant's mark, and the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use (see section 3.3 of WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the nature of the disputed domain name, combined with the fact that the Complainant's BESIX trademark is distinctive and widely used, makes it difficult to conceive any plausible legitimate future use

of the disputed domain name by the Respondent.

Moreover, the Complainant provides evidence of use of e-mail addresses linked to the disputed domain name, which appear to include names of employees of the Complainant. In the circumstances of this case, the Panel finds that the use of the disputed domain name for fraudulent activity is likely, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities. Therefore, the Panel considers that the inference of bad faith is strengthened in light of the cumulative circumstances indicating bad faith.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

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. **BESIX.CAM**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION	2022-04-12
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Publish the Decision
