

ADMINISTRATIVE PANEL DECISION

INDUSTEEL France v. Bradley, Industeel

Case No. D2023-2250

1. The Parties

The Complainant is INDUSTRIEL France, France, represented by Nameshield, France.

The Respondent is Bradley, Industeel, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <industeel.org> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in French with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2023. On May 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on June 2, 2023.

The Registrar confirmed that the language of the registration agreement of the disputed domain name is English. On May 25, 2023, the Center sent an email communication to the Complainant inviting it to provide satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in French, to submit the Complaint translated into English, or submit a request for French to be the language of the administrative proceedings. On June 2, 2023, the Complainant submitted the Complaint translated into English. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. The Center received three informal email communications from the Respondent on June 26 and 27, 2023, and July 12, 2023. The Respondent did not submit any formal response. The Center notified the commencement of Panel appointment process on July 4, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on July 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

4. Factual Background

The Complainant is INDUSTRIEL France, a French company operating in the field of hot-rolled and forged steel sheets, ingots and formed parts, and owning several trademark registrations for INDUSTRIEL, among which:

- International Trademark Registration No. 745241 for INDUSTRIEL, registered on October 5, 2000;
- European Union Trade Mark Registration No.001920438 for INDUSTRIEL, registered on January 18, 2002.

The Complainant also operates on the Internet, its main website being "www.industeel.net".

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on May 11, 2023, and it is inactive.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its trademark INDUSTRIEL.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name is inactive.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark INDUSTRIEL is well known in the field of hot-rolled and forged steel sheets, ingots and formed parts. Therefore, the Respondent targeted the Complainant's trademark at the time of

registration of the disputed domain name and the Complainant contends that the passive holding of the disputed domain name qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no formal reply to the Complainant's contentions. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the absence of a reply to the Complainant's contentions have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

However, on June 26 and 27, 2023, the Center received the following two informal email communications from the Respondent:

"Hi, how are you doing? My name is Bradley Smith. I got a complaint about an email account called `industeelco@ [...]`. I am sending my response to this claim right now. How can we settle this? The email account uses a domain of : gmail.com. The email name is "industeelco" . I created this account intentionally with the idea that "industeelco" is not representing "industeel" in any way. Let me know how you think it's best to move forward with this. Thanks, -Brad" (June 26, 2023);

"Hi, this is Bradley Smith. How can we move forward on this `industeelco@[...]` claim? What are the next steps?" (June 27, 2023).

On July 12, 2023, the Respondent offered to transfer the disputed domain name "to whoever it concerns".

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark INDUSTEEL both by registration and acquired reputation and that the disputed domain name is identical to the trademark INDUSTEEL.

It is well accepted that a generic Top-Level Domain, in this case ".org", is typically ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

“(i) before any notice to you [the respondent] of the dispute, [the respondent’s] your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) [the respondent] you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The disputed domain name is inactive.

The *prima facie* case presented by the Complainant is enough to shift the burden of production of evidence to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “[f]or the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the respondent has] registered or [has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of [its] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(vi) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark INDUSTEEL in the field of hot-rolled and forged steel sheets, ingots and formed parts is clearly established and the Panel finds that the Respondent likely knew of the Complainant and its trademark, and deliberately registered the disputed domain name in bad faith.

As regards the use in bad faith of the disputed domain name, which is inactive, the Panel considers that bad faith may exist even in cases of so-called "passive holding", as found in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the circumstances of this case, the Panel finds that such passive holding does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In support thereof, the Panel considers as relevant the notoriety of the Complainant's trademark in the field of hot-rolled and forged steel sheets, ingots and formed parts, the Respondent's failure to formally participate, and the Respondent's use of a privacy service to mask its details in the publicly-available Whois.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which is identical to the Complainant's trademark, further supports a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <industeel.org>, be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: July 19, 2023