Decision for dispute CAC-UDRP-102989

Case number	CAC-UDRP-102989
Time of filing	2020-03-25 09:42:39
Domain names	lesaffregulf.com

Case administrator

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

Complainant

Organization	LESAFFRE ET COMPAGNIE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Kumar Associates

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- LESAFFRE (& device), French Registration No. 3202372, filed on January 2, 2003, and duly renewed, in the name of LESAFFRE ET COMPAGNIE (the Complainant);

- LESAFFRE GROUP (& device), EU Registration No. 003623097, filed on January 21, 2004, and duly renewed, in the name of LESAFFRE ET COMPAGNIE (the Complainant); and

- LESAFFRE GROUP (& device), International Registration No. 826663, filed on February 2, 2004, and duly renewed, in the name of LESAFFRE ET COMPAGNIE (the Complainant).

It is worth noting that, the Complainant owns many similar trademarks in various countries, which have not been cited in these proceedings.

FACTUAL BACKGROUND

The Complainant is a French family-created group, founded in 1853 and known in the field of fermentation. Ever since, the Complainant has acquired commercial presence all around the world, including in the Gulf region.

The Complainant owns a good-sized portfolio of trademarks including the wording "LESAFFRE", among which a French registration dating back to 1976. It also owns a multitude of related domain names, such as <lesaffre.com> since December 18, 1996.

The disputed domain name <LESAFFREGULF.COM> was registered on January 25, 2020 by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its LESAFFRE trademark, as it fully incorporates this trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere addition of the component “GULF” (which evokes the Gulf market) after the Complainant’s trademark does not change the overall impression of a most likely connection with the trademark LESAFFRE of the Complainant. As to the gTLD “.com”, the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given the distinctiveness and reputation of the LESAFFRE trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant’s trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name as parking page with commercial links, in order to mislead the consumers in believing that it is affiliated with the Complainant, which is considered as a clear indication of bad faith. According to the Complainant, the Respondent has tried to attract internet users for commercial gain.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

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).

The disputed domain name consists of the Complainant's whole trademark (LESAFFRE), written before a geographical term.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the LESAFFRE trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark in its field of business and the fact that the disputed domain name fully incorporates this trademark, it is clear that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to a parking website with commercial links in French language, through which the Respondent is attempting to have commercial gain. For this Panel, such misleading behaviour clearly amounts to use in bad faith. At the same time, the Complainant is quite active in the Gulf region, especially in the United Arab Emirates (where the Respondent is also located), a fact proven by the website “lesaffre.ae”, as well as by a simple Google search of the words “lesaffre gulf”. Therefore, it is impossible for this Panel to conceive any plausible active use of the disputed domain name by the Complainant that would be legitimate.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 wholly incorporates the Complainant's trademark, written next to a geographical term. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's well-known trademark. His misleading use of the disputed domain name is in bad faith as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LESAFFREGULF.COM**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2020-04-29

Publish the Decision