Decision for dispute CAC-UDRP-103265

Case number	CAC-UDRP-103265
Time of filing	2020-09-07 10:32:53
Domain names	gnoslslesaffre.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LESAFFRE ET COMPAGNIE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Copperas Cove Chamber of Commerce

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns a number of trade marks consisting of the name LESAFFRE, including the French trade mark LESAFFRE, registration number 3202372, registered on 2 January 2003, in international classes 01, 05, 16, 29, 30, 31, 32, 33, 35, 38, 41, 42 and 45; the International trade mark LESAFFRE GROUP, registration number 826663, registered on 4 February 2004, in international classes 1, 5, 29, 30, 31, 32, 35, 41 and 42; and the International trade mark GNOSIS BY LESAFFRE, registration number 1497257, registered on 12 September 2019, in international classes 1 and 5.

In addition, the Complainant owns the domain name <gnosisbylesaffre.com>, registered on 14 January 2019, which is connected to the official website of the Complainant's Gnosis by Lesaffre business division. The Complainant asserts that it owns numerous other domain names but has not adduced evidence of ownership of any other domain names.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a company specialised in yeasts and fermentation. It designs, manufactures and markets innovative solutions for baking, food taste and pleasure, health care, and biotechnology. The Complainant is a multi-national company

originally established in northern France in 1853 and now employs 10,700 people in 50 countries. The Complainant achieves a turnover of more than 2,2 billion euros, over 40% of which is generated in emerging markets.

Gnosis by Lesaffre is a business unit of the Complainant, which offers skills and expertise in microbial fermentation and in the recovery and purification of molecules derived from yeasts and bacteria to propose a unified range of nutritional ingredients to human health customers and partners.

The Respondent registered the disputed domain name <gnoslslesaffre.com> on 13 May 2020. As at the date of the Amended Complaint and of this decision, the disputed domain name resolves to a parking page with commercial pay-per-click (PPC) links. There is also a tag line stating “Interested in gnoslslesaffre.com? Our Domain Broker Service may be able to get it for you. Find out how”.

PARTIES CONTENTIONS

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).

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 notes that, by way of non-standard communication dated 2 October 2020, the case administrator reported “Please be aware that neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware if the written notice was received by the Respondent or not. As far as the e-mail notice is concerned, the e-mail notice sent in English to <postmaster@GNOSLSLESAFFRE.COM> was returned back undelivered as the e-mail address had permanent fatal errors - (please find the confirmation enclosed). An e-mail in English was sent to the respondent, but the delivery note was not returned back. No further e-mail address could be found on the disputed site (please find the screenshot enclosed). The Respondent never accessed the online platform.”

On enquiry by the Panel, the case administrator confirmed that, on 10 September 2020, written notice of the proceedings was additionally also sent to the Respondent at president@copperascove.com but that no delivery receipt was sent back to the email address of CAC.

The Panel is therefore satisfied that the CAC gave notice of the proceedings to the Respondent by all available means anticipated by paragraph 2(a)(ii) of the UDRP Rules, including electronically to the e-mail address identified by the Respondent when registering the disputed domain name, 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

With regard to the first UDRP element, the Panel finds that the disputed domain name <gnoslslesaffre.com> is, if not identical with, then at least confusingly similar to the Complainant's trade marks LE SAFFRE and GNOSIS BY LESAFFRE. Indeed, the disputed domain name incorporates the Complainant's trade mark LE SAFFRE in its entirety. The addition of the term “gnosls” is not sufficient to alter a finding of confusing similarity because it obviously alludes to the Complainant’s

Gnosis by Le Saffre business unit. The Panel follows in this respect the view established by numerous other panels that a domain name that wholly incorporates a Complainant's trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy <porsche-autopartes.com>). In addition, it could be argued that this is a case of "typo squatting" since the disputed domain name contains a misspelling of the Complainant's trade mark GNOSIS BY LESAFFRE in that it replaces the letter "i" in "gnosis" with the letter "l" to read "gnosls" and omits the word "by" from the Complainant's trade mark. This analysis would equally lead the Panel to the conclusion that the disputed domain name is at least confusingly similar to the Complainant's trade marks. The omission of the word "by" does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks, and its associated domain name; rather to the contrary, it still suggests that the disputed domain name provides access to the Gnosis by Lesaffre division of the Complainant's business. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered confusingly similar to the relevant trade mark (see, for example, WIPO Case No D2003-0093, Microsoft Corporation -v- X-Obx Designs <xobx.com>) ("Typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar").

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. As at the time of the Amended Complaint and of this decision, the disputed domain name resolves to a "typical" parking page with commercial links, which additionally suggests that the disputed domain name may be for sale. One of these PPC links is to "Hefe" (the German word for yeast) and therefore trades off the complainant's trade marks. The Panel follows the view of numerous other panels who have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering of goods or services or legitimate non-commercial or fair use (see, for example, Forum Case No FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe (stating that Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use)). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised by the Complainant to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Finally, the Whois information also does not suggest that the Respondent is commonly known by the disputed domain name <gnoslslesaffre.com>. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, the Complainant adduced evidence to show that, if the Respondent had carried out a Google search for the term "gnoslslesaffre", the search results would have yielded several results related to the Complainant and its business unit Gnosis by Lesaffre. It is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical with or confusingly similar to the Complainant's trade mark, and that he registered the disputed domain name in full knowledge of the Complainant's trade mark. Furthermore, the disputed domain name currently resolves to a parking page with commercial links. The Panel accepts the Complainant's submissions that the Respondent is attempting to attract Internet users for commercial gain to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves (see, for example, WIPO Case No D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **GNOSLSLESAFFRE.COM**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht**

DATE OF PANEL DECISION 2020-10-14

Publish the Decision