Decision for dispute CAC-UDRP-103478

Case number	CAC-UDRP-103478
Time of filing	2020-12-29 00:00:00
Domain names	leasaffre.com

Case administrator

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

Complainant

Organization	LESAFFRE ET COMPAGNIE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Fizzle Technology

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.

IDENTIFICATION OF RIGHTS

The Complainant has evidenced to be the registered owner of several trademarks relating to its company name and brand “Lesaffre”, inter alia, the following:

- Word-/device mark LESAFFRE, French Intellectual Property Organisation, Registration No.: 3202372, Registration Date: January 2, 2003, Status: active;

- Word-/device mark LESAFFRE GROUP, World Intellectual Property Organization (WIPO), Registration No.: 826663, Registration Date: February 4, 2004, Status: active, with protection for numerous countries worldwide.

FACTUAL BACKGROUND

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

This is a clear case of "typosquatting“, i.e. the disputed domain name obviously contains a misspelling of the Complainant’s trademark: LEASAFFRE instead of LESAFFRE®. The Complainant refers to previous panel decisions, for instance:

- Forum case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines (finding bad faith registration and use of the <microssoft.com> domain name as it merely misspelled the complainant's MICROSOFT mark);

- Forum case no. FA 157321, Computerized Sec. Sys., Inc. v. Hu (finding that the respondent engaged in typosquatting, which is evidence of bad faith registration and use under Policy 4(a)(iii)).

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 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 Panel finds that the disputed domain name <leasaffre.com> is confusingly similar to the LESAFFRE trademark in which the Complainant has rights. The disputed domain name incorporates the predominant word element of the LESAFFRE trademark entirely, however in a misspelled/typo-squatted version caused by adding the letter "a". Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that a domain name which consists of a common, obvious or intentional misspelling of the complainant's trademark (i.e. a typo-squatting) is still considered to be confusingly similar to the relevant trademark for purposes of the first element under the UDRP. Accordingly, the fact that the disputed domain name obviously includes an intentional misspelling/typo-squatting of the Complainant's LESAFFRE trademark is not at all inconsistent with the finding of confusing similarity, especially given the fact that the Complainant's LESAFFRE trademark is still recognizable within the disputed domain name.

Therefore, the Complainant has satisfied paragraph 4(a)(i) and, thus, the first element of the Policy.

Moreover, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name, nor is the Respondent commonly known thereunder. The Respondent has not been authorized to use Complainant's LESAFFRE trademark, either as a domain name or in any other way. Also, there is no reason to believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the term "Lesaffre" or "Leasaffre" whatsoever. Finally, the disputed domain name apparently has not yet been used by the Respondent whatsoever (so-called "passive holding"); however, many UDRP panels have recognized that the mere registration of a domain name, even one that is comprised of a confirmed dictionary word or phrase, may not of

itself confer rights or legitimate interests in a disputed domain name. Accordingly, the Panel has no difficulty in finding that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

The Panel finally holds that the disputed domain name was registered and is being used by the Respondent in bad faith. The way in which the disputed domain name has been registered, namely as a trademark's typo-squatted version, indicates that the Respondent had knowledge of the Complainant's LESAFFRE trademark at the time of the registration of the disputed domain name and leaves little, if no doubt that the disputed domain name aims at targeting this very trademark. Also, there is a consensus view among UDRP panelists that a passive holding of a disputed domain name may, in appropriate circumstances, be consistent with the finding of bad faith, in particular in circumstances in which, for example, there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant's trademark's rights. In the case at hand, in the absence of any other reasonable explanation as to why the Respondent should rely on the (typo-squatted) disputed domain name and given that the Respondent has brought forward nothing in substance relating to the intended use of the disputed domain name that would have allowed the Panel to hold for the Respondent, the Panel finds that the Respondent has registered and is making use of the disputed domain name in a manner which at least takes unjustified and unfair advantage of the Complainant's LESAFFRE trademark and related reputation and must, therefore, be considered as registered and being used in bad faith within the meaning of the Policy.

Therefore, the Complainant has also satisfied paragraph 4(a)(iii) and, thus, the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEASAFFRE.COM**: Transferred

PANELLISTS

Name	**Stephanie G. Hartung, LL.M.**

DATE OF PANEL DECISION 2021-02-03

Publish the Decision