

Decision for dispute CAC-UDRP-105128

Case number	CAC-UDRP-105128
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Time of filing	2023-01-16 09:25:58
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Domain names	lesaiffre.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	LESAFFRE ET COMPAGNIE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	metal mojohn
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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.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademark registrations:

- the Indonesian trademark “LESAFFRE” No. IDM000571730 registered since 21 April 2015;
- the Malaysian trademark “LESAFFRE” No. TM2020001164 registered since 20 January 2020;
- the Singaporean trademark “LESAFFRE” No. 40202001088W registered since 16 January 2020;
- the European Union trademark “LESAFFRE GROUP” No. 003623097 registered since 21 January 2004; and
- the international registration “LESAFFRE GROUP” No. 826663 registered since 4 February 2004, designating numerous countries around the world.

FACTUAL BACKGROUND

The Complainant is a global player in yeasts and fermentation who designs, manufactures and markets innovative solutions for baking, food taste & pleasure, health care and biotechnology. The Complainant was established in northern France in 1853 as a family business, and now it is a multi-national and multicultural company that is committed to working with confidence to better nourish and protect the planet. The Complainant employs 11,000 people based in more than 50 countries. The Complainant achieves a turnover of EUR 2.2 billion.

The Complainant owns a number of domain names that include the same distinctive wording LESAFFRE, such as the domain name <lesaffre.com>, registered since 1996.

The disputed domain name was registered on 31 December 2022 and it resolves to an index page. Besides, MX servers are configured in respect of the disputed domain name.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant states that the disputed domain name is confusingly similar to its asserted trademark "LESAFFRE", as the disputed domain name and the Complainant's trademark are visually and phonetically similar.

The Complainant argues that this is a clear case of "*typosquatting*", i.e. the disputed domain name obviously contains a misspelling of the Complainant's trademark: LESAIFFRE instead of LESAFFRE. The Complainant refers to a previous UDRP panel decision concluding that the addition of a letter is insufficient to distinguish the domain name from the mark (CAC Case No. 103478).

Moreover, the Complainant contends that the addition of the gTLD suffix ".COM" does not change the overall impression of the designation as being connected to the trademark LESAFFRE. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant further argues that it has made a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent "metal mojohn" is not identified in the Whois database as the disputed domain name. Thus, the Respondent has registered the disputed domain name only in order to create a likelihood of confusion with the Complainant's trademark. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark "LESAFFRE" or apply for registration of the disputed domain name by the Complainant.

The Complainant also claims that the disputed domain name is a typo-squatted version of the trademark LESAFFRE. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name. The Complainant refers to previous UDRP panel decisions, namely Forum Case No. 1765498 and Forum Case No. 1597465.

Furthermore, the disputed domain name resolves to an index page. Therefore, the Complainant contends that the Respondent did not make any use of the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name, as established by previous UDRP panel decisions (Forum Case No. 1773444).

Turning to the bad faith argument, the Complainant asserts that the Respondent has registered the disputed domain name, which is confusingly similar to the Complainant's prior trademark "LESAFFRE" many years after the Complainant had established a strong reputation and goodwill in its mark. Moreover, the word "LESAIFFRE" has no meaning in any language, and a Google search on the expression "LESAIFFRE" displays several results, all of them being related to the Complainant and its activity. Thus, the Complainant believes that the Respondent likely targeted the Complainant and its trademarks when registering the disputed domain name.

The Complainant further states that the registration of the disputed domain name was intentionally designed to be confusingly similar to the Complainant's trademarks which previous UDRP panels considered as evidence of bad faith (Forum Case No. 877979).

Furthermore, the website in relation to the disputed domain name resolves to an index page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name. It is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. As prior UDRP panels have held, incorporating a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO Case No. D2000-0003 and WIPO Case No. D2000-0400).

Finally, the Complainant points out that MX servers are configured in respect of the disputed domain name which suggests that the disputed domain name may be actively used for email purposes, as established by previous UDRP panels (CAC Case No. 102827).

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

This is a proceeding pursuant to Paragraph 4 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 CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith.

1. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for device marks "LESAFFRE" and "LESAFFRE GROUP" in various countries around the world, which were registered long before the registration of the disputed domain name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The disputed domain name consists of the word "LESAFFRE" whereas the Complainant's trademark contains the distinctive word element "LESAFFRE". Thus, the only difference is the added letter "I" in the disputed domain name, which difference is - in the view of this Panel - hardly recognizable at the first glance. The Complainant's "LESAFFRE" trademark is recognizable within the disputed domain name and the added letter is not sufficiently distinctive to escape the finding of confusing similarity between the two signs.

Furthermore, this indeed appears to be a clear case of typosquatting. The Panel has no reason to depart from the earlier decision mentioned by the Complainant (CAC Case No. 103478) which points out that a domain name consisting of a common, obvious or intentional misspelling of the complainant's trademark 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/typosquatting of the Complainant's "LESAFFRE" trademark is not at all inconsistent with the finding of confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

2. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use (because it resolves to an index page).

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name.

3. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states, in summary:

- (a) that the disputed domain is confusingly similar to the Complainant's trademark;
- (b) that the Respondent likely targeted the Complainant and its trademarks when registering the disputed domain name – in other words, the Respondent must have had actual knowledge of the Complainant and its trademark;
- (c) that the registration of the disputed domain name was intentionally designed to be confusingly similar to the Complainant's trademarks;
- (d) that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate; and
- (e) that MX servers are set up in respect of the disputed domain name which suggests that the disputed domain name could be used for illegitimate email traffic.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "LESAFFRE". The mere registration of a domain name which is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith, especially where confusing similarity is high and the disputed domain name only contains an additional letter which suggests obvious or intentional misspelling of the Complainant's trademark (typosquatting).

The Panel also believes that the Complainant submitted evidence sufficiently demonstrating that the Respondent must have (or should have) been aware of the existence of the Complainant and its trademark.

With respect to the fact that the disputed domain name has not been put to any use, the Panel notes that the so-called passive holding of a domain name cannot prevent a finding of bad faith. In the present case, the Complainant's trademark is distinctive, the Respondent failed to respond to the Complaint and there seems no plausible good faith use for the disputed domain name. Furthermore, the Complainant submitted evidence that the disputed domain name was set up with MX (mail exchange) records. Configuration of MX records for email purposes is indicative of potential fraudulent use of the disputed domain name, such as spam and phishing, and can lead to the finding of bad faith, as established by previous panels (CAC Case No. 102827 and CAC Case No. 102380).

Consequently, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lesaiffre.com**: Transferred

PANELLISTS

Name	Vojtěch Chloupek
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DATE OF PANEL DECISION	2023-02-19
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Publish the Decision
