

Decision for dispute CAC-UDRP-105955

Case number	CAC-UDRP-105955
Time of filing	2023-11-09 09:50:45
Domain names	saforelleessential.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	S.P.M.D.
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	web master
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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 is the owner of several trademarks.

In particular, S.P.M.D. owns:

- International Registration SAFORELLE n° 777338 registered on February 26, 2002 and duly renewed for goods included in classes 3 and 5.
- International Registration SAFORELLE n° 1301511 registered on March 3, 2016 for goods included in classes 3 and 5.
- EUTM application SAFORELLE ESSENTIAL n° 18937419 filed on October 13, 2023 for goods included in classes 3 and 5.

FACTUAL BACKGROUND

The Complainant informs that S.P.M.D., operating under the name “LABORATOIRES IPRAD”, develops health and wellness products for women. It has enjoyed strong growth over the last 30 years, as a proud leader on the French Feminine Care market. Created in 1989, the SAFORELLE trademark is used for the Complainant’s intimate hygiene and feminine hygiene products. The Complainant is the owner of several trademarks SAFORELLE, as well as of the EUTM application for SAFORELLE ESSENTIAL. The Complainant also owns several domain names containing the trademark SAFORELLE.

The Complainant notes that the disputed domain name <saforelleessential.com> was registered on October 13, 2023 and that the website linked to the disputed domain name simply redirects to a parking page offering the disputed domain name for sale for \$2.588.

In the Complainant's view the disputed domain name <saforelleessential.com> is confusingly similar to its trademark SAFORELLE since the addition of the term ESSENTIAL is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark.

In addition, according to the Complainant, the Respondent is not known as the disputed domain name. The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name <saforelleessential.com> and that the Respondent is not related in any way with the Complainant. Furthermore, the Complainant informs that S.P.M.D. does not carry out any activity for, nor has any business with the Respondent and that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark SAFORELLE, or apply for registration of the disputed domain name by the Complainant.

The Complainant also outlines that the disputed domain name <saforelleessential.com> has been registered on the day of the filing of the EUTM no. 18937419 for the corresponding trademark SAFORELLE ESSENTIAL in the name of S.P.M.D. The Complainant contends that it evinces that the Respondent has knowledge of the Complainant, its trademark SAFORELLE, and its filed trademark SAFORELLE ESSENTIAL when he registered the disputed domain name.

Moreover, the disputed domain name is offered for sale for \$2.588. The Complainant claims that the Respondent fails to make an active use of the disputed domain name and that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which is evidence of bad faith registration and use.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

1) The Panel is of the opinion that the disputed domain name is confusingly similar to the Complainant's earlier trademark SAFORELLE. As a matter of fact, this trademark is entirely reproduced in the disputed domain name. Concerning the addition of the term ESSENTIAL, the addition of this generic term, clearly associated to the Complainant's business (developing of products including essences and essential oils), enhances the confusing similarity (see Intesa Sanpaolo SPA v. Milen Radumilo, CAC Case No. 103027 related to the domain name <intesasanpalo-convalida.com> and ARCELORMITTAL v. Private Private, CAC Case No. 105049 related to the domain <arcelormittal-burns.com>). Finally, in accordance with the consensus view of past UDRP panels, the Panel finds that the Top-Level domain (".COM" in this case) is not sufficient to exclude the likelihood of confusion since it is a mere technical requirement included in all domain names. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant has long standing rights in the mark SAFORELLE. The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and as the Respondent was never authorized to use the domain name by the Complainant. The Respondent, in the absence of any response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use the Complainant's marks in the disputed domain name. On the basis of the evidence submitted, and in the absence of a response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds on the second element of the Policy.

3) According to the Panel, it is apparent that the Respondent registered the disputed domain name the same day as the Complainant applied for its EUTM SAFORELLE ESSENTIAL. The trademark SAFORELLE ESSENTIAL is obviously highly distinctive and the SAFORELLE mark is very well reputed. Therefore, in the Panel's view, it cannot be a mere coincidence that the Respondent chose to register the identical disputed domain name on the same day of the Complainant's EUTM filing. Accordingly, the Panel finds that it was more likely than not that the Respondent was well aware of the Complainant group and its business and SAFORELLE mark when it registered the disputed domain name and that he did so opportunistically. The disputed domain name has not been used by the Respondent but rather resolves to a parking page on which it is simply advertised as being for sale for US\$ 2.588. The advertised price is well beyond the basic administrative cost involved in applying for the disputed domain name and it is apparent that the Respondent registered the disputed domain name in order to make a profit from its re-sale. These facts, including the Respondent's opportunistic registration of the disputed domain name <saforelleessential.com> the same day as the Complainant filed for its highly distinctive trade mark SAFORELLE ESSENTIAL, the well-reputed nature of the SAFORELLE mark and the parking of the disputed domain name on a parking page with an advertisement for sale of the same disputed domain name <saforelleessential.com> at many times the administrative cost of its acquisition are circumstances together highly supportive of an inference of the Respondent's use of the disputed domain name in bad faith. Under paragraph 4(b)(i) of the Policy, circumstances indicating that a respondent has registered a domain name primarily for the purpose of selling, renting, or otherwise transferring it to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name are evidence of registration and use of a domain name in bad faith. In this case the disputed domain is identical to the Complainant's highly distinctive trade mark and in circumstances that it was registered the same day as application was made for the trade mark, there is a very strong inference that the Respondent was seeking to profit one way or another from the disputed domain name by re-selling it to the Complainant or to a competitor (see Editions Dalloz v. yahya zumrut, CAC Case No. 103392, LyondellBasell Industries Holdings B.V. v. Ge Rong Kai, CAC Case No. 105595, REGIE AUTONOME DES TRANSPORTS PARISIENS v. faruk sayan, CAC Case No. 103440). Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and the Complaint also succeeds on 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. **saforelleessential.com**: Transferred

PANELLISTS

Name	Guido Maffei
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DATE OF PANEL DECISION 2023-12-12

Publish the Decision
