

## **ADMINISTRATIVE PANEL DECISION**

Laforet France v. Antoine Bauch

Case No. D2023-1922

### **1. The Parties**

The Complainant is Laforet France, France, represented by Cabinet Bouchara, France.

The Respondent is Antoine Bauch, Switzerland.

### **2. The Domain Name and Registrar**

The disputed domain name <agence-laforet.com> (the “Domain Name”) is registered with Register SPA (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 17, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on June 19, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

The Complainant is a French real estate agency franchise network providing services in the fields of sale, purchase and rental management, co-ownership management and commercial real estate, which holds trademark registrations in the LAFORET trademark, such as:

- French Trademark Registration N° 3270835 for LAFORET filed on January 30, 2004, registered on July 9, 2004 and duly registered;
- European Union Trademark Registration N° 003714763 for LAFORET filed on March 15, 2004 and registered on December 22, 2005.

The Domain Name was registered on November 25, 2022. The Domain Name has not resolved to an active website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits that the Domain Name is confusingly similar to its LAFORET trademarks because the Domain Name includes the LAFORET mark in its entirety. The Complainant contends the Complainant's LAFORET mark is recognizable within the Domain Name, so the addition of a descriptive term "agence", which means "store" in French, would not prevent finding of confusing similarity between the LAFORET mark and the Domain Name. The Complainant contends that it is generally accepted that the generic Top-Level Domain ("gTLD") suffix, such as ".com", can be disregarded when assessing the similarities between a domain name and a trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name for the following reasons: 1) the Respondent who does not own any trademark rights in the Domain Name, was not authorized by the Complainant to use its well-known mark in the Domain Name; 2) there is no relationship between the parties; 3) The Respondent is not commonly known by the Domain Name; and 4) the passive holding of the Domain Name shows that the Domain Name was not registered in connection to any *bona fide* offering of goods or services by the Respondent, or to any legitimate noncommercial or fair use.

The Complainant asserts that the Domain Name was registered and is being used in bad faith. The Complainant contends that the Respondent registered the Domain Name in bad faith. The Complainant claims that the Respondent could not have been unaware of the Complainant's well-known trademark at the time of the Domain Name registration because the Respondent registered the Domain Name comprised of the Complainant's well-known mark and the descriptive word "agence". In the Complainant's opinion, such knowledge of the Complainant's mark suggests bad faith. The Complainant further claims that the Respondent's bad faith should be established based on the following: the Respondent, who registered the Domain Name comprised of its well-known trademark, is trying to hide its real identity behind the privacy shield. The Complainant asserts that the Domain Name does not resolve to any active website, which would not prevent a finding of bad faith use under the doctrine of passive holding given the overall circumstances of the case.

##### B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

Evidence shows that the Complainant owns several trademark registrations for the LAFORET mark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."<sup>1</sup> It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement.<sup>2</sup>

The Domain Name consists of the term "agence"<sup>3</sup>, a hyphen symbol, the Complainant's LAFORET mark and the gTLD ".com". Because the Complainant's LAFORET mark is recognizable within the Domain Name, the addition of the word "agence" does not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's LAFORET mark.

The Complainant has satisfied the first element of the UDRP.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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<sup>1</sup> Section 1.8, [WIPO Overview 3.0](#).

<sup>2</sup> Section 1.11.1, [WIPO Overview 3.0](#).

<sup>3</sup> This means "store" in French.

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case<sup>4</sup> in respect of the lack of rights or legitimate interests of the Respondent.

The Panel finds that the Complainant satisfied its burden of production for the following reasons. First, it does not appear that the Respondent owns any trademarks corresponding to the Domain Name. The Respondent did not dispute it. Second, the Complainant did not authorize or license the Respondent's use of the Complainant's trademark in the Domain Name. Third, the Respondent has not been commonly known by the Domain Name. Fourth, the Respondent's use of the Domain Name does not satisfy requirements of *bona fide* offering of goods and services because the Domain Name does not resolve to an active website.<sup>5</sup> Finally, where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner<sup>6</sup>. Here, the Domain Name consists of the Complainant's trademark and the word "agence", which means "store" in French. Such combination of the mark and the word "agence" suggests sponsorship or endorsement by the Complainant.

Based on the foregoing, the Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent.<sup>7</sup> Because the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

### **C. Registered and Used in Bad Faith**

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith. The Complainant contends that the Respondent registered the Domain Name in bad faith because it knew of the Complainant's trademark at the time of the Domain Name's registration. The Domain Name was registered more than eighteen years after the Complainant's trademark registration. Given the distinctiveness of the Complainant's mark, the registration of the Domain Name - many years after the registration of the Complainant's mark and the composition of the Domain Name that include the descriptive word "agence" along with the Complainant's trademark, it is likely that the Respondent targeted the Complainant at the time of the Domain Name's registration and registered the Domain Name in bad faith to trade on the goodwill of the Complainant's trademark.

The Respondent's non-use or passive holding of the Domain Name also constitutes evidence of the Respondent's bad faith. It is well-established that non-use of a domain name would not prevent finding of bad faith if the totality of the circumstances of the case support a finding of bad faith<sup>8</sup>. This is exactly such a case because of the following: (i) the Respondent registered the Domain Name comprising the Complainant's is distinctive as has been established by the evidence on file; (ii) the Respondent failed to submit a response to the Complainant's allegations; and (iii) there is no plausible good faith use to which the Domain Name may be put.

The Complainant has satisfied the third element of the UDRP.

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<sup>4</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>5</sup> See *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#).

<sup>6</sup> Section 2.5.1, [WIPO Overview 3.0](#).

<sup>7</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>8</sup> Section 3.3, [WIPO Overview 3.0](#).

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <agence-laforet.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: July 3, 2023