

ADMINISTRATIVE PANEL DECISION

Safapac Ltd v. tropicalheightsafricalimited, tropica heightsafrika
Case No. D2023-3549

1. The Parties

Complainant is Safapac Ltd, United Kingdom ("UK"), represented internally.

Respondent is tropicalheightsafricalimited, tropica heightsafrika, Uganda.

2. The Domain Name and Registrar

The disputed domain name <safapac.net> (the "Domain Name") is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 21, 2023. On August 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, 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 (NameSilo) and contact information in the Complaint. The Center sent an email to Complainant on August 24, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 25, 2023.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 19, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on September 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

Complainant describes itself as a “chemical manufacturing and packing company”. According to Complainant’s main website, located via the domain name <safapac.co.uk>:

“Safapac is a leading, family-owned, contract manufacturer and packer of speciality chemicals, operating from a purpose-built facility in Peterborough, UK. This site is fully equipped to provide a range of services, including liquid blending, bead milling, filtration, heating, handling of toxic & flammable materials.”

“In addition to its vast range of technology and specialist manufacturing capabilities, Safapac also offer a wide variety of packing services. These include liquid packing, repacking, labelling, batch coding, nitrogen purging, induction sealing and packing to meet a retail scale.”

“Established in 1996 and highly qualified, Safapac prides itself on the quality, integrity and traceability of all its products, formulating and packing them to the highest standards and continuously striving to gain new industry approvals. Shift chemists oversee all areas of production to ensure compliance with CropLife International guidelines, GMP, ISO standards and other regulations. Safapac also hold a manufacturing licence issued by the Veterinary Medicines Directorate (VMD), which allows it to manufacture veterinary medicines.”

“The significant level of technical support offered by Safapac is highly valued by its customers and is seen as a critical benefit to their business.”

Complainant asserts that SAFAPAC is its trademark, though Complainant does not specify whether its alleged trademark is registered. The content on Complainant’s website, including the material quoted above, tends to support Complainant’s view that it has been using SAFAPAC as a source identifier for its goods.

The Domain Name was registered on April 26, 2023. The Domain Name resolves to a website which, according to Complainant, is “a scraped copy of our website”. Complainant alleges that the website is used to “misdirect our clients and suppliers to false contact details”. Complainant also states: “Enquiries are also being made to potential suppliers of goods using a safapac.net email address but our genuine company name and address, this is clearly an attempt to defraud suppliers.”

Respondent’s website at the Domain Name shows that the site uses Complainant’s stylized logo, and largely mimics Complainant’s site. For instance, the four above-quoted paragraphs from Complainant’s site are reproduced verbatim on Respondent’s site.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

The Panel concludes that Complainant has common law rights in the trademark SAFAPAC through use demonstrated in the record. The fact that Respondent is shown to have been targeting Complainant's trademark, based on the manner in which the related website is used, supports a finding that the mark has achieved significance as a source identifier. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward to articulate any *bona fide* reason for registering the Domain Name. Based on the undisputed record in this case, it appears clear that Respondent has targeted Complainant's mark to create a fake website seeking to impersonate Complainant for untoward, and probably fraudulent, ends. Such conduct does not permit a finding that Respondent has rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has

- engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
 - (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. On this record, the Panel finds it clear that Respondent targeted Complainant's mark when registering the Domain Name, and has used the Domain Name for illegitimate commercial gain by seeking to impersonate Complainant. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <safapac.net> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: September 21, 2023