

ADMINISTRATIVE PANEL DECISION

Etablissements J. Soufflet v. Francois SOUFLET
Case No. D2024-1934

1. The Parties

The Complainant is Etablissements J. Soufflet, France, represented by Fidal, France.

The Respondent is Francois SOUFLET, Belgium.

2. The Domain Name and Registrar

The disputed domain name <soufflet.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 7, 2024. On May 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (No information provided) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 2024, 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 amendment to the Complaint on May 22, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on June 25, 2024. 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.

On July 4, 2024, the Panel issued Procedural Order No. 1, pointing out that the disputed domain name corresponds to the apparent surname of the Respondent and indicating that the Panel's limited Internet searches revealed the apparent existence of an individual bearing the name of the Respondent, including an identically named LinkedIn account. The Panel raised the possibility of rights or legitimate interests under paragraph 4(c)(ii) of the Policy and gave both Parties an opportunity to comment. The Complainant submitted a response timeously on July 8, 2024. No response was received from the Respondent.

4. Factual Background

The Complainant, founded in 1964, is part of the Soufflet Group, specializing in the first conversion and trade of cereals, wheat, barley, rice, and pulses and in the support of winegrowers.

The Complainant owns trademark registrations for its SOUFFLET mark in numerous jurisdictions, including International Trademark Registration No. 1156536 SOUFFLET in classes 30, 31, 35, 40, 42, and 44, having a registration date of February 20, 2013, designating the Respondent's jurisdiction of the European Union amongst others. The Complainant owns the domain name <soufflet.com>, registered on April 13th, 1997, from which it operates its primary website.

The disputed domain name was registered on March 24, 2023, and was inactive on the day of submission of Complaint. In the Complainant's submission to the Procedural Order No.1, the disputed domain name resolves to a Registrar parking page stating that "The owner of this domain hasn't put up a website yet."

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name was registered and used in bad faith as a typosquatting variant of the Complainant's SOUFFLET mark in order to take advantage of the Complainant's reputation in its mark to drive traffic to the Respondent's website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Here, the second-level portion of the disputed domain name, “souflet”, is identical but for one missing letter of the trademark SOUFFLET.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant’s mark is highly similar to the disputed domain name, differing by one letter, and was registered and well known long before registration of the disputed domain name. The Complainant has certified that the disputed domain name is not authorized by it. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In Procedural Order No. 1, the Panel pointed out that the Respondent’s surname, per the Whois record and as was disclosed by the Registrar, corresponds to the composition of the disputed domain name, and that there appeared to be an individual with an account on LinkedIn having a name identical to that of the Respondent. The possibility of rights or legitimate interests under paragraph 4(c)(ii) of the Policy was therefore raised by the Panel.

Although it is quite possible that the LinkedIn profile found by the Panel is indeed that of the Respondent, and that the Respondent may have rights or legitimate interests flowing from his surname, the Respondent has not come forward with any evidence in support of this conclusion. There is insufficient evidence in the record to connect the Respondent to the LinkedIn account or to any actual person bearing the Respondent’s name. Bearing in mind that following a prima facie case having been made out by the Complainant, the burden of production is on the Respondent, and bearing in mind that the Respondent has been given two opportunities to come forward with such evidence, the Panel declines to find in the Respondent’s favor in this regard.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Complainant contends, in essence, that because of the prior repute of its mark and the similarity of its mark with the disputed domain name, that the Respondent must have been acting in bad faith with the Complainant in mind when it registered the disputed domain name. The Complainant supports this

contention by pointing out that the Respondent has not responded to the Complainant's prior demand letters or the Complaint, and that the Complainant has been the target of phishing attempts in the recent past.

Noting the Panel's general powers articulated inter alia in paragraphs 10 and 12 of the Rules, the Panel's Internet searches not only found one LinkedIn account having a name identical to that of the Respondent, but also the accounts of many other people having the surname "Souflet". It is thus at least conceivable that the Respondent's surname is in fact "Souflet", corresponding to the Registrar's disclosure and Whois record for the disputed domain name, and that the Respondent registered the disputed domain name with his surname in mind, possibly intended for vanity email accounts for his family, rather than having the Complainant in mind.

The Panel notes that the disputed domain name had been registered for over a year when the Complaint was filed. The Complainant has not been able to produce any evidence of actual targeting in this time.

Noting the Complainant's suggestion that the disputed domain name may be used for email-based phishing, it is well known that phishing often occurs using newly registered domain names. There is no evidence that the disputed domain name was used for phishing. Furthermore, the Panel could find no indication that any security vendors have flagged the disputed domain name for any malicious use despite the disputed domain name having registered for over a year. In the absence of any evidence of actual phishing or actual bad faith use in the record after over a year since registration of the disputed domain name, the Panel is not prepared to apply such argument in coming to a determination in this case.

The potential good faith use of the disputed domain name corresponding to a surname was put to the Complainant in Procedural Order No. 1. The Complainant's response was to reiterate the circumstantial indicators of bad faith raised in the Complaint, such as the repute of its mark, the failure of the Respondent to respond, the Respondent's failure to use the disputed domain name, etc. No direct evidence of bad faith targeting was presented. Furthermore, the Complainant appears to have acknowledged the possibility of good faith on the Respondent's part, or at least the paucity of the evidence relating to bad faith, when it stated in its response to Procedural Order No. 1 "[t]his reinforces the fact that the disputed domain name may have been registered in bad faith..." (emphasis added).

Further factors pointing away from bad faith include the fact that the disputed domain name does not resolve to any website relating to the Complainant or its industry, the composition of the disputed domain name does not append a term which relates to the Complainant's industry, no reports can be found on the Internet of the disputed domain name having been used for malicious purposes, and the Respondent has not apparently been involved in UDRP proceedings before, one or all of which often being present where phishing or other bad faith use is intended.

In the absence of any direct evidence of bad faith targeting, and in light of the usage of "Souflet" as a surname pointing to a conceivable good faith use case for the disputed domain name, it is at least equally probable that the disputed domain name was intended for use in connection with its significance as a surname as it is that it was intended to target the Complainant. Consider what the circumstances would look like if it is accepted, for the sake of argument, that the Respondent did in fact register the disputed domain name in good faith with his surname in mind, for example for use as part of a vanity email address. It seems likely to the Panel that the circumstances would look no different to those presently pertaining in the record, thus supporting the Panel's conclusion of at least equal probabilities. As the onus is on the Complainant to prove its case on balance of probabilities, the Panel finds that there is insufficient evidence of bad faith targeting of the Complainant.

Given the (as yet unsupported) possibility that the disputed domain name was intended for typosquatting on the Complainant's mark, the Panel considers that should new material evidence come to light in future that is reasonably unavailable to the Complainant at the time of the present proceeding demonstrating that the disputed domain name is targeting or has targeted the Complainant, it may be possible for the Complainant to refile the Complaint, subject to the usual considerations on refiling. [WIPO Overview 3.0](#), section 4.18.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: July 22, 2024