

ADMINISTRATIVE PANEL DECISION

SANEF v. Bruno Martin

Case No. D2022-4826

1. The Parties

The Complainant is SANEF, France, represented by Cabinet Vidon Marques & Juridique PI, France.

The Respondent is Bruno Martin, France.

2. The Domain Name and Registrar

The disputed domain name <thesanef-group.com> is registered with One.com A/S (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 16, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 27, 2022, 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 December 28, 2022. In response to a notification by the Center that certain annexes to the Complaint were missing, the Complainant submitted missing annexes on January 11, 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 the Respondent of the Complaint, and the proceedings commenced on January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on February 15, 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 motorway operator company, created in 1963. In 1994, the Complainant extended its scope of activities by starting radio broadcasting with the channel "SANEF 107.7". In support of its activities, the Complainant operates a website which it claims is hosted under the domain name <sanef.com>.

For the purpose of the Complaint, the Complainant relies on the following trade marks:

- French trade mark no. 4712040 SANEF, filed on December 14, 2020 and registered on April 9, 2021 for goods and services in Classes 9, 16, 25, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45;
- European Union trade mark no. 008310831  SANEF, filed on April 17, 2009 and registered on January 27, 2010 for goods and services in Classes 9, 16, 25, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45.

The disputed domain name was registered on October 4, 2022. The identity of the Respondent was disclosed by the Registrar in the course of the proceeding. The Respondent is located in France.

Shortly after its registration, the disputed domain name was used by the Respondent for a phishing scam which is detailed in the Complaint. The Respondent sent an email pretending to be a purchase director of the Complainant, to a potential supplier, regarding the alleged purchase of IT hardware. The email contained the contacts details of the Complainant, as well as its official logo.

The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name reproduces its earlier trade mark SANEF, with the addition of a hyphen and the words "the" and "group" associated with the Top-Level Domain ("TLD") ".com".

On the second element of the Policy, the Complainant indicates that the Respondent does not have any rights or legitimate interests in the disputed domain name. Besides, the disputed domain name has not been subject to a legitimate noncommercial or fair use. Instead, the Respondent has used it in connection with a phishing scam. Finally, the Complainant adds that "the [disputed] domain name does not lead to any active website, but rather to the registrar's webpage".

On the third element of the Policy, the Complainant asserts that the Respondent registered and is using the disputed domain name in bad faith. The Respondent intends to attract Internet users by creating a likelihood of confusion with the Complainant and its trade marks, which are duly registered. In addition, SANEF is a coined distinctive term. Therefore, the Respondent knew or should have known about the Complainant's rights which, as such, may be constitutive of bad faith. Also, the Respondent has operated a phishing scam with the use of the disputed domain name, with at least one email sent to a potential supplier. Also, as additional indicia of bad faith conduct, the Complainant notes that the disputed domain name currently does not resolve to an active website.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights. As per the previous UDRP panels decisions, this first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trade mark SANEF.

The disputed domain name includes the Complainant's trade mark SANEF, combined with the terms "the" and "group" preceded by a hyphen. These additions do not prevent the Complainant's trade mark from being immediately recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark 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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Hence, the first criteria element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- i. before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- ii. the Respondent (as individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trade mark or service mark rights; or
- iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed

domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trade marks or to register a domain name incorporating any of those trade marks.

Much to the contrary, it appears from the evidence submitted by the Complainant that the Respondent is using the disputed domain name to send emails in support of a phishing scam impersonating the Complainant. Such conduct is fraudulent and does not amount to a *bona fide* offering of goods or services.

Moreover, the composition of the disputed domain name itself carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1. The use of the disputed domain name affirms such risk.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Indisputably, the Respondent here has registered and used the disputed domain name in bad faith.

The Respondent has:

- Reproduced identically the Complainant's trade mark when registering the disputed domain name. He did so within an expression which reinforces the term SANEF as being dominant: the domain name refers to "the SANEF group";

- Used the disputed domain name for a phishing scam, described in the description of facts above, to the detriment of the Complainant's business and reputation, and to that of potential suppliers. The use of the disputed domain name in a fraudulent email scheme demonstrates that the Respondent not only knew of the Complainant, its business and marks, but also attempted to pass itself off as the Complainant, which is indicative of bad faith. See [WIPO Overview 3.0](#), section 3.4.

Accordingly, the third element set out in paragraph 4(a) of the Policy is also satisfied.

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 disputed domain name, <thesanef-group.com>, be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: March 1, 2023