

## **ADMINISTRATIVE PANEL DECISION**

**SoletLuna Holdings, Inc., LifeWave, Inc. v. Luca Maria Ferretti, LMF16 srl**  
**Case No. D2024-4547**

### **1. The Parties**

The Complainant is SoletLuna Holdings, Inc., LifeWave, Inc., United States of America (“United States”), represented by ARC IP Law, P.C, United States.

The Respondent is Luca Maria Ferretti, LMF16 srl, Italy, represented by Studio Legale Associato Ruggiero-Visco, Italy.

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

The disputed domain name <lifewaveroma.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 5, 2024. On November 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 November 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2024. The Response was filed with the Center on December 2, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on December 24, 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.

#### **4. Procedural Order No. 1 and Extension**

On January 9, 2025 the Panel issued Procedural Order No. 1, directing both Parties to provide English translations of certain documents that had been submitted in Italian only, and requesting the Respondent to provide further evidence in support of certain of his submissions, namely, that the Complainant had acquiesced in, and had even encouraged, the Respondent's registration and use of the disputed domain name. The Respondent was directed to provide his supplemental filing by January 16, 2025, and the Complainant to respond to that supplemental filing by January 23, 2025. The Respondent provided a supplemental filing out of time, on January 22, 2025, and the Complainant's time for reply was extended until January 29, 2025. The Complainant filed its supplemental filing by way of reply on January 23, 2025.

#### **5. Factual Background**

The first and second Complainants are corporations registered in Georgia, United States. The first Complainant is the owner, and the second Complainant a licensee, of the LIFEWAVE trademarks to which further reference is made below. The first and second Complainants are referred to collectively as the "Complainant" in the remainder of this Decision.

The Complainant is a manufacturer of non-transdermal adhesive patches, promoted under the name and trademark LIFEWAVE.

The Complainant is the owner of registrations for the trademark LIFEWAVE in various territories, including for example:

- European Union trademark registration number 009366972 for the word mark LIFEWAVE, registered on February 21, 2011 in International Class 5; and
- United States trademark registration number 5285572 for the word mark LIFEWAVE, registered on September 12, 2017 in International Class 5.

The disputed domain name was registered on September 21, 2009.

The Respondent appears to have been an authorized distributor or "Brand Partner" of the Complainant between 2009 and the suspension of his account on a date which is unclear.

The Complainant exhibits evidence that, on March 25, 2024, the disputed domain name resolved to an Italian-language website at "www.lifewaveroma.com" which appeared to offer the Complainant's products for sale.

#### **6. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to its LIFEWAVE trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends that the Respondent was not permitted to register a domain name incorporating its LIFEWAVE trademark, and has been using the disputed domain name to infringe the Complainant's intellectual property rights.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits, in particular, that the Respondent registered the disputed domain name in 2009 in order to target the Complainant's trademark rights and has rejected numerous attempts by the Complainant to resolve the matter on an amicable basis.

The Complainant exhibits evidence in support of its case, including the following items:

- (a) A letter from the Complainant's representatives to the Respondent, dated October 9, 2018. The letter objects to the sale of LIFEWAVE branded products on the Respondent's website at "www.lifewaveroma.com" and states (among other matters) that "[t]he use of Lifewave in the URL of any member created website is strictly prohibited."
- (b) The Complainant's Policies and Procedures dated December 15, 2020, which include a statement that its members may not register or use a domain name that incorporates its trademarks.
- (c) An internal memorandum dated June 8, 2022, stating that the Respondent's website has been "in breach of policy for the last 12 years" and that his multiple accounts have been closed many times.
- (d) Correspondence with the Respondent dated December 2023, in which the Respondent suggests that he is no longer the registrant of the disputed domain name and no longer controls the relevant website. In an email dated December 6, 2023, the Respondent states: "Hi, you write to me every year about this site, but is not my website. Every year!!! I sell your product directly and not with internet."
- (e) A Declaration of the Chairman of the Board for the Complainant LifeWave, Inc. and Chief Executive Officer for the Complainant SoletLuna Holdings, stating that the Complainant did not request the Respondent to place a "statement of independence" on its website (see below), that the Complainant has never permitted Brand Partners to register domain names including the LIFEWAVE trademark, that the Respondent signed the 2020 Policies and Procedures which contained this restriction, and that the Respondent had been notified multiple times over 12 years that the disputed domain name was not in accordance with the Complainant's policies.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent contends that the website linked to the disputed domain name is "not currently active".

The Respondent states that he was an authorized independent distributor of the Complainant's products for 15 years and was recognized as a legitimate Brand Partner with an official distributor number (which he cites). The Respondent remarks that the Complainant conceals this fact in its Complaint.

The Respondent submits that "the domain name in question, which is now being disputed, was not only approved by [the Complainant] at the time of its registration in 2009, but was even encouraged by the [Complainant] to enhance the local distribution of its products..."

The Respondent contends that there was no explicit opposition from the Complainant to his use of the disputed domain name for many years, and that the Complainant continued to sell products to him despite being well aware of his activities. The Respondent produces an invoice in this regard dated November 2023.

The Respondent submits that the web page exhibited by the Complainant prominently stated (in Italian): "This site is completely independent from lifewave.com." He contends that this statement was expressly requested by the Complainant's compliance department some years ago, thereby further tacitly accepting his use of the disputed domain name.

The Respondent denies in the circumstances that he has at any time acted in bad faith with regard to the disputed domain name.

## **7. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

### **A. Identical or Confusingly Similar**

The Complainant has established that it is the owner of registered trademark rights for the mark LIFEWAVE. The disputed domain name comprises that trademark in full, together with the additional term “roma”, which does not prevent the Complainant’s trademark from being recognizable within the disputed domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

In the light of the Panel’s findings in respect of the third element of the Policy, below, it is unnecessary for the Panel to determine the issue of whether or not the Respondent has rights or legitimate interests in respect of the disputed domain name (see paragraph 4.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

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

The third element of the Policy involves the conjunctive requirement that the disputed domain name must both have been registered, and is being used, in bad faith. This requirement may frustrate a complainant in a case where the disputed domain name is being used in bad faith, but where the initial registration or acquisition of the disputed domain name cannot be shown to have been in bad faith. Moreover, prior cases under the UDRP have comprehensively rejected the concept of “retroactive bad faith,” i.e. relying upon the respondent’s later bad-faith conduct to infer bad-faith intent at the time of registration.

In the view of the Panel, in order to establish registration of the disputed domain name in bad faith in this case, the Complainant must show that the Respondent was, at the time of registration, aware of a prohibition on the Complainant’s distributors from registering domain names which included the Complainant’s trademark, but that the Respondent registered the disputed domain name anyway, with the intention of taking unfair advantage of the Complainant’s goodwill in that trademark.

The Panel does not find that the Complainant has met the burden of establishing the circumstances set out above.

The Panel notes in this regard that (even in response to the Procedural Order referred to above) neither party was able to produce evidence which substantially supported its pleaded case. In particular, the Complainant has not provided any document which made clear that, as of September 2009, its distributors or Brand Partners were prohibited from using a domain name which incorporated the LIFEWAVE trademark, or that the Complainant took immediate objection to the Respondent’s registration and use of that trademark as the disputed domain name. By the same token, the Respondent has failed to produce any evidence directly in support of his contention that the Complainant expressly approved and indeed encouraged his registration and use of the disputed domain name, or that the Complainant requested the Respondent to place a disclaimer on its website.

The Panel does find, however, that the Complainant continued its commercial dealings with the Respondent over a period of a number of years, despite his registration and use of the apparently objectionable disputed domain name.

In the circumstances, and noting that the burden of proof lies upon the Complainant to demonstrate that the Respondent originally registered the disputed domain name in bad faith, the Panel does not find that the evidence available to it, or the surrounding circumstances, support that conclusion.

In the circumstances, the Panel is unable to conclude that the disputed domain name was registered in bad faith for the purposes of the Policy, and the Complaint must necessarily fail.

The Panel makes the observation, however, that its remit under the UDRP is limited to the matters stipulated in the Policy, which are directed primarily towards “cybersquatting” and related activities. The Panel’s findings in this case do not therefore prejudice the ability of the Complainant to pursue the matter within a court of competent jurisdiction or other appropriate forum if so advised.

## **8. Decision**

For the foregoing reasons, the Complainant is denied.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: February 5, 2025