

## **ADMINISTRATIVE PANEL DECISION**

**Elemis USA, Inc. v. Super Privacy Service LTD c/o Dynadot / stevestrievl**  
**Case No. D2022-2933**

### **1. The Parties**

The Complainant is Elemis USA, Inc., United States of America (“United States”), represented by Strategic IP Information Pte Ltd., Singapore.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / stevestrievl, China.

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

The disputed domain name <elemiscn.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2022. On August 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 10, 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 amended Complaint on August 12, 2022.

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 August 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 7, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on September 14, 2022. 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 British skincare company. The Complainant has been in business since 1989 and was founded in London, United Kingdom, by entrepreneur Linda Steiner. The Complainant produces and sells skincare in over 45 countries worldwide and uses the domain name <elemis.com> as the portal site for its official websites. The Complainant's local websites are accessible via URLs in which the domain name is preceded by the respective country code such as <us.elemis.com>, <uk.elemis.com>, <fr.elemis.com>

The Complainant is the owner of several trademark registrations comprising of the word element ELEMIS, including, but not limited to the European Union trademark, ELEMIS (word mark), with registration No. 014747133 and registration date of March 16, 2016, for goods and services in classes 1, 5, and 30, and the International Registration for the trademark ELEMIS (word mark), with registration No. 778031 and with registration date of March 26, 2002, for goods in class 3, designating *inter alia* various European countries, as well as Singapore and Mexico. These two trademark registrations will together in singular be referred to as the "ELEMIS Trademark".

The Domain Name was registered on March 18, 2022. The Domain Name resolved to a website (the "Website"), displaying the ELEMIS Trademark and promoting and selling ELEMIS skincare at heavily discounted prices.

#### **5. Parties' Contentions**

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

The Complainant contends the following:

The Domain Name is identical or at least confusingly similar to the Trademark. More specifically, the Domain Name consists of the ELEMIS Trademark in its entirety.

The Respondent cannot have any rights or legitimate interests in regard to the Domain Name. The Domain Name simply copies the ELEMIS Trademark in which the Complainant has rights and is not authorized to do so. In addition to this, the Respondent uses the Website to which the Domain Name resolves to offer for sale products from the ELEMIS Trademark at discounted prices. Thus, the Respondent is relying heavily on the false and misleading assumption that the Website is associated with or endorsed by the Complainant. Such use cannot constitute a *bona fide* offering of goods and services.

Furthermore, the Domain Name has been registered and used in bad faith. The Respondent registered the Domain Name with prior knowledge of the ELEMIS Trademark. Whereas, the Respondent is intentionally using the Domain Name, to redirect Internet users to the Website, for commercial gain, on which the Respondent offers and advertises goods from the ELEMIS Trademark.

##### **B. Respondent**

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

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (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

The Complainant has proven to have rights in the Trademark.

The Domain Name consists of the Trademark in its entirety, followed by the two letters “cn”, which is the usual country code for China.

As set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, the addition of other terms, such as a geographical term would not prevent a finding that a domain name is confusingly similar to the relevant trademark for purposes of the first element.

The Trademark is clearly recognizable in the Domain Name and the addition of the letters “cn” does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s Trademark.

Accordingly, the Panel finds that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant in its Complaint has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

Additionally, the Panel could not find any evidence by referring to the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel may conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business, or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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 *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interest in the Domain Name. However, the Respondent has not presented evidence of any rights or legitimate interest it may have in the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

In more detail, the Complainant asserted that the Respondent registered the Domain Name without receiving prior authorization from the Complainant. In addition to this, the Respondent has not used or made 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.

To the contrary, the Respondent uses the Website to offer products for sale at heavily discounted prices under the ELEMIS Trademark. The Complainant asserted that by doing so the Respondent is, thus, intentionally and misleadingly diverting consumers to its own Website for commercial gain.

Certainly lacking a Response, the Panel finds that the Website creates the impression of being an official website affiliated with the Complainant. The Website can even be regarded as an impersonation of the Complainant as the Website includes the text “the official website of the ELEMIS online mall”. In accordance with [WIPO Overview 3.0](#), section 2.5.1 the use of the Domain Name can thus not constitute fair use as it effectively impersonates or suggests endorsement by the Complainant.

The Complainant has not alleged that the products offered for sale on the Website are genuine or counterfeit. Nonetheless, even if the products are not counterfeit and the Respondent considers itself to be a reseller or distributor of the Complainant’s products, the Respondent has not satisfied all of the requirements set forth in the so-called “Oki Data test” (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). Whereas, the Website does not accurately and prominently disclose the Respondent’s relationship with the Complainant. To the contrary, as set out before the Website creates the impression of being an official website of the Complainant and also the copyright notice mentioned on the Website refers to “Elemis Online Store”

Hence, the Respondent’s use cannot be considered as legitimate noncommercial or fair use of the Domain Name either.

The Panel, therefore, finds that the second element has been satisfied.

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

The Panel finds that the Respondent has registered and used the Domain Name in bad faith and refers to its consideration under section 6.B. above.

In light of the evidence filed by the Complainant, the Panel finds that the ELEMIS Trademark and the Complainant’s activities are well known. The Complainant is owner of numerous trademarks, which were used and registered many years before the Domain Name was registered. Furthermore, the Complainant is active in over 45 countries and has grown to be a renowned skincare brand winning multiple international prizes for her skincare products.

In addition to this, the Panel considers the fact that for its official website the Complainant uses the domain name <us.elemis.com> for the offering of ELEMIS products. The Domain Name is almost identical to the Complainant’s domain name as it also incorporates the acronym of the country code of China, which is the country the Domain Name purports to operate in.

Accordingly, in the Panel’s view, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. All the more so, because the Respondent seems to use the Website in order to offer for sale products of the ELEMIS brand.

As a result, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to its Website by creating a likelihood of confusion with the Complainant’s ELEMIS Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the products that are being offered for sale on the Website.

Furthermore, the Panel takes into consideration that the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#) this also supports a finding of registration and or use in bad faith.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith. The cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met and that the Domain Name was registered and is being used in bad faith.

## **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, <elemiscn.com> be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: September 26, 2022