

## **ADMINISTRATIVE PANEL DECISION**

Elemis USA, Inc. v. Shane Farman, Phantom Select LLC  
Case No. D2023-2642

### **1. The Parties**

Complainant is Elemis USA, Inc., United States of America (“U.S.”), represented by IP Twins, France.

Respondent is Shane Farman, Phantom Select LLC, U.S.

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

The disputed domain name <ellemis.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 June 20, 2023. On June 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on June 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 6, 2023.

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 Respondent of the Complaint, and the proceedings commenced on July 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 17, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on August 23, 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 owns registrations for its ELEMIS trademark in dozens of countries including, for example, German Trademark Registration No. 1187301 registered in International Class 3 on March 25, 1993, and European Union Trademark No. 3880366, registered in International Class 44 on October 10, 2005.

The disputed domain name was registered on February 27, 2023, and routes to a parking page provided by the Registrar.

#### 5. Parties' Contentions

##### A. Complainant

Complainant avers that it was founded in 1989 and enjoyed a 2022 turnover from product sales in over twenty countries of USD 86 million. To support the allegations that it is well-known, Complainant avers, among other things, that it is the number one skincare brand in the United Kingdom and that its Instagram website has more than 500,000 followers.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

Complainant seeks transfer.

##### B. Respondent

Respondent did not reply to Complainant's contentions.

#### 6. Discussion and Findings

For Complainant to prevail under the Policy, it must be established that (1) the disputed domain name is identical or confusingly similar to Complainant's ELEMIS trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith. Policy, paragraph 4(a).

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

##### A. Identical or Confusingly Similar

The Panel agrees with Complainant that the disputed domain name is confusingly similar to Complainant's marks for purposes of the Policy.

UDRP panels commonly disregard generic Top-Level Domains ("gTLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".com" gTLD, the Panel notes that the disputed domain name nearly replicates Complainant's mark in total, having only added an additional letter "l" to the ELEMIS mark. In all other respects, the disputed domain name is identical to Complainant's ELEMIS mark. The Panel finds that such misspelling or

typosquatting by Respondent does not prevent a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.9.

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark and that the first element of paragraph 4(a) of the Policy is established.

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

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production of evidence passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent does not submit relevant evidence rebutting the *prima facie* case. *Id.*

The Panel accepts Complainant's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademark in the disputed domain name. The Panel also accepts Complainant's uncontroverted averment that Respondent is not commonly known by the disputed domain name.

Under the UDRP, a respondent may prove that it will be making *bona fide* use of a disputed domain name, for example, by showing a business plan or other preparations for the legitimate use of a domain name prior to the filing of a complaint. See [WIPO Overview 3.0](#), section 2.2.

The record indicates, however, that the disputed domain name does not resolve to an active webpage and there is no evidence indicating preparations for its legitimate use. Respondent is not, therefore making a *bona fide* offering or noncommercial legitimate or fair use of the disputed domain name.

In light of the evidence and allegations, the Panel finds that Complainant has established a *prima facie* case and that Respondent has not rebutted that *prima facie* case.

The Panel therefore holds that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of Policy, paragraph 4(a) is established.

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

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Respondent registered the disputed domain name following Complainant's longstanding use of its ELEMIS trademark for over 50 years and nearly 30 years after Complainant's first trademark registration in Germany.

It appears beyond dispute that Respondent was aware of Complainant's mark and sought to exploit it through registration of the confusingly similar disputed domain name.

The Panel further finds that a presumption of bad faith is created by Respondent's mere registration of a domain name which is confusingly similar to Complainant's well-known ELEMIS marks. [WIPO Overview 3.0](#), section 3.1.4. Respondent has submitted no evidence to contradict this presumption. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g.*, [WIPO Overview 3.0](#) Sections 3.2.1 and 3.3.

The Panel also finds that Respondent's passive holding of the disputed domain name evidences Respondent's use of the disputed domain name in bad faith. *E.g.*, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#) Sections 3.2.1.

Respondent's failure to submit a response to the amended Complaint and the failure to provide accurate contact details as required by the Registrar are further evidence of use in bad faith.<sup>1</sup> [WIPO Overview 3.0](#), section 3.3.

The Panel holds, therefore, that the third element of Policy paragraph 4(a) is also established.

## 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 <ellemis.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: September 6, 2023

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<sup>1</sup>Written notification to Respondent of the Complaint was not deliverable by courier using the registrant address details (which appear to be false) provided by Respondent to the Registrar.