

## ADMINISTRATIVE PANEL DECISION

Laboratoires Expanscience v. 于青青 (Yu Qing Qing)  
Case No. D2023-5312

### 1. The Parties

The Complainant is Laboratoires Expanscience, France, represented by Nameshield, France.

The Respondent is 于青青 (Yu Qing Qing), China.

### 2. The Domain Name and Registrar

The disputed domain name <mustela.info> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2023. On December 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 25, 2023, 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.

On January 2, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On January 3, 2024, the Complainant requested English to be the language of the proceeding. The Respondent objected to the Complainant’s request on January 3, 2024.

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 in Chinese and English, and the proceedings commenced on January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties’ Commencement of Panel Appointment Process on January 29, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on February 8, 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. Factual Background**

The Complainant is a French family-owned pharmaceutical and dermo-cosmetics laboratory, that has been operating for more than 70 years.

The Complainant develops and manufactures innovative osteoarthritis and skincare products, including two leading brands – Piasclédine 300 and Mustela – that are sold in 120 countries.

The Complainant has an extensive global portfolio of trade marks that include the brand MUSTELA, including the following:

- International Trade Mark Registration No. 154904 for MUSTELA in Classes 3 and 5, registered on July 16, 1951, designating Switzerland, and Italy, etc.;
- International Trade Mark Registration No. 574185 for MUSTELA in Classes 3 and 5, registered on August 1, 1991, designating China, and Russian Federation, etc.; and
- International Trade Mark Registration No. 1282469 for MUSTELA in Class 3, registered on October 15, 2015, designating Australia, Spain, and United States of America, etc.

The disputed domain name was registered on November 30, 2023.

The Complainant provided a screenshot indicating that, at the time of filing the Complaint, the disputed domain name redirected to a page offering to sell the disputed domain name. At the time of issuance of this Decision, the disputed domain name continued to redirect to the same page offering to sell.

#### **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 asserts that it has prior rights in the MUSTELA trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further asserts that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's MUSTELA trade mark.

The Complainant also notes that it has not authorized the Respondent to use its MUSTELA mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also asserts that there is no evidence indicating any connection between the Respondent and the MUSTELA mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name.

The Complainant therefore asserts that the registration and any use of the disputed domain name whatsoever was in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including:

- The English language is the language most widely used in international relations and is one of the working languages of the Center;
- The disputed domain name is formed by words in Roman characters (American Standard Code for Information Interchange) and not in Chinese script; and
- The Complainant is not in a position to conduct the proceedings in Chinese without a great deal of additional expense and delay due to the need for translation of the Complaint and the supporting Annexes.

Meanwhile, it is noted that the Respondent objected to the Complainant's request for the language of the proceeding to be English and requested that Chinese be the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must exercise such discretion in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time, and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Considering the circumstances of this case. i.e., the disputed domain name is formed by words in Roman characters, the website to which the disputed domain name redirects to is in English, and the Respondent was notified in English and Chinese of the Complaint but did not file a substantive response), the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English, and as such, the Panel has issued this Decision in English.

The Panel further finds that such determination should not prejudice either Party and should ensure that the proceeding takes place with due expedition.

### **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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Disregarding the generic Top-Level Domain (“gTLD”) “.info”, the disputed domain name is identical to the Complainant’s trade mark MUSTELA. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

As such, and based upon the available information, 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 Respondent has not rebutted the Complainant’s prima facie showing and has not provided any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

No evidence adduced by the Respondent to prove that, prior to the notice of the dispute, it used or demonstrated preparations to use the disputed domain name in connection with a bona fide offering of goods or services. Also, no evidence was adduced to show that the Respondent is commonly known by the disputed domain name or that it is making a legitimate noncommercial or fair use of the name. The Panel further notes the disputed domain name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s prima facie showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

As such, and based on the available evidence, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the

owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

The Panel notes that at the time the Respondent registered the disputed domain name, the MUSTELA trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith.

[WIPO Overview 3.0](#), section 3.1.4.

The Respondent has provided no evidence to justify the adoption of the term "mustela" in the disputed domain name.

In light of the foregoing, it would be unreasonable to conclude that, at the time of the registration of the disputed domain name, the Respondent was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in MUSTELA for its products and services predate the registration date of the disputed domain name. A simple online search (such as via Baidu, Bing, etc.) for the term "mustela" would have revealed that it is a renowned brand in its industry.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

In light of the foregoing, the Panel concludes that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name.

Under section 4(b)(i) of the Policy there is evidence of registration and use in bad faith where there are circumstances indicating that a respondent has registered or acquired a domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to a complainant who is the owner of the trade mark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the complainant's documented out-of-pocket costs directly related to the domain name.

The disputed domain name in this case, redirects Internet users to a page on the third-party website Dan.com that is a domain name marketplace listing for an amount of USD 950, which seems in excess of the Respondent's out-of-pocket expenses in registering the name. The disputed domain name is also identical to the Complainant's MUSTELA mark. It is most likely that the Respondent considered that he could sell the disputed domain name to the Complainant, or a competitor, or someone who wanted to use it to attract Internet users and then redirect them to its own website.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

## **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 <mustela.info> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: February 22, 2024