

ADMINISTRATIVE PANEL DECISION

L'Oréal v. 杭州余杭鼎昊百货商行 (hang zhou yu hang ding hao bai huo shang hang)

Case No. DCC2023-0001

1. The Parties

The Complainant is L'Oréal, France, represented by Dreyfus & associés, France.

The Respondent is 杭州余杭鼎昊百货商行 (hang zhou yu hang ding hao bai huo shang hang), China.

2. The Domain Name and Registrar

The disputed domain name <lorealparis.cc> 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 January 25, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 2023, 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 in English on February 3, 2023.

On January 30, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 3, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 8, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any formal response but it did send an informal email to the Center in Chinese on February 8, 2023. Accordingly, the Center notified the commencement of the process to appoint the Panel on March 1, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 10, 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 cosmetics company with a portfolio of brands, one of which is “L’Oréal Paris”. The Complainant holds multiple trademark registrations in multiple jurisdictions, including the following:

- International trademark registration number 1532645 for L’OREAL, registered on April 29, 2020, designating multiple jurisdictions, including China, and specifying goods in classes 3 and 5; and
- International trademark registration number 1692831 for L’OREAL PARIS, registered on June 1, 2022, designating two jurisdictions, including China, and specifying goods and services in classes 3, 9, 35 and 41.

The above trademark registrations remain current. The Complainant has also registered multiple domain names, including <loreal.com>, registered on October 24, 1997, and <lorealparis.com>, registered on June 5, 1998, which it uses in connection with websites where it provides information about the L’Oréal group, and the L’Oréal Paris brand, respectively.

The Respondent is ostensibly a Chinese department store from Hangzhou. Its contact address in the Registrar’s Whois database is in Beijing and incomplete.

The disputed domain name was registered on December 2, 2022. It does not resolve to any active website; rather, it is passively held.

On December 9, 2022, the Complainant sent a cease-and-desist letter to the Respondent via the Registrar. It followed up with reminders.

5. Parties’ Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant’s L’OREAL and L’OREAL PARIS trademarks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating that trademark. The Respondent is not commonly known by the disputed domain name or the name “L’Oréal” nor “L’Oréal Paris”. The disputed domain name resolves to an inactive site.

The disputed domain name was registered and is being used in bad faith. It is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Complainant is well-known throughout the world. The composition of the disputed domain name entirely reproduces the Complainant’s trademarks only confirms that the Respondent was aware of the Complainant and its trademarks.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In an informal email it asked why it was being sued.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that it has no knowledge of Chinese hence translation of the Complaint into Chinese would create a significant burden on the Complainant, and the disputed domain name is composed of Latin characters, from which it assumes that the Respondent has knowledge of English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. However, despite the Center having sent emails regarding the language of the proceeding and the notification of the Complaint in both Chinese and English, the Respondent did not comment on the language of the proceeding or seek to participate other than by sending a brief informal email. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the L'OREAL and L'OREAL PARIS marks. Given the Panel's findings below, it is unnecessary to consider the L'OREAL mark further for the purposes of the first element of paragraph 4(a) of the Policy.

The disputed domain name wholly incorporates the L'OREAL PARIS mark, omitting only the apostrophe for technical reasons. This omission, which makes little difference visually and none aurally, does not avoid a finding of confusing similarity. The only additional element in the disputed domain name is the country code Top-Level Domain ("ccTLD") extension of the Cocos (Keeling) Islands, ".cc". As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the Complainant's trademark for the purposes of the first element of paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] 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 an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark 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 trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain name does not resolve to an active website. This does not constitute a use of the disputed domain name in connection with a *bona fide* offering of goods or services for the purposes of the Policy. Nor it is a legitimate noncommercial or fair use of the disputed domain name.

With respect to the second circumstance set out above, the Respondent's company name is "杭州余杭鼎昊百货商行 (hang zhou yu hang ding hao bai huo shang hang)", which may be translated as "Hangzhou Yuhang Dinghao Department Store", not the disputed domain name. Its contact person is named "王西 (Wang Xi)", not the disputed domain name. There is no evidence indicating that the Respondent, whether as an individual, business or other organization, has been commonly known by the disputed domain name.

The Complainant submits that the Respondent is neither affiliated with the Complainant in any way nor authorized by the Complainant to use and register the Complainant's trademark, or to seek registration of any domain name incorporating that trademark.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent did not rebut that case because he did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

With respect to registration, the disputed domain name was registered in 2022, after the registration of the Complainant's L'OREAL PARIS marks, including in China where the Respondent is ostensibly established. The disputed domain name incorporates the L'OREAL and L'OREAL PARIS marks, omitting only the apostrophe for technical reasons, with no additional element besides a ccTLD extension, which is a technical requirement of domain name registration. The L'OREAL PARIS mark has no apparent meaning other than as a reference to the Complainant's brand. The possibility that the disputed domain name incorporates that exact mark (but for punctuation) by coincidence appears remote. The Respondent offers no alternative explanation as to why he chose to register the Complainant's trademarks in the disputed domain name. In these circumstances, the Panel considers it likely that the Respondent knew of the Complainant's mark at the time that it registered the disputed domain name.

With respect to use, the Respondent currently makes only passive use of the disputed domain name but this does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the disputed domain name incorporates the L'OREAL and L'OREAL PARIS marks, minus the apostrophe for technical reasons, with no additional element besides a ccTLD extension. The Complainant has acquired a considerable reputation in these marks through use and promotion. The Respondent provides no explanation of any potential good faith use of the disputed domain name. The Respondent's contact address in the Registrar's Whois database is incomplete, due to which the courier was unable to deliver the written notice of the Complaint, which suggests that the Respondent has taken steps to prevent it being located. In all these circumstances, the Panel considers it more likely than not that the Respondent is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <lorealparis.cc> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: March 20, 2023