

ADMINISTRATIVE PANEL DECISION

L'Oréal v. Julien Cangelosi, YESWECANGE
Case No. D2024-3166

1. The Parties

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

The Respondent is Julien Cangelosi, YESWECANGE, France.

2. The Domain Name and Registrar

The disputed domain name <garnier-afrique.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 2024, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 7, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant requested a suspension of the proceeding on August 8, 2024. The proceeding was suspended on August 9, 2024. On September 6, 2024, the Complainant requested a reinstatement of the proceeding and filed an amended Complaint on September 11, 2024.

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 September 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2024. The Respondent did not submit any response to the Center. Accordingly, the Center notified the Parties about the Commencement of Panel Appointment Process on October 4, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on October 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 corporation founded more than a century ago, which has grown to become a world leader in the cosmetics and beauty industry. The Complainant has around 86,000 employees, operates in over 150 countries, and its shares are listed on the Paris stock exchange.

The Complainant's wholly-owned subsidiary Garnier, founded in 1904, is focusing on haircare and is a world leader in this sector of the cosmetics industry.

The Complainant owns several trademark registrations containing the term GARNIER, including International Trademark GARNIER No. 248215, registered on October 7, 1961 (hereinafter referred to as: the "Mark").

The Complainant also owns many domain names incorporating the Mark, including <garnier.com>, registered on December 31, 1997, and <garnier.fr>, registered on October 13, 2008.

The disputed domain name was created on October 20, 2023.

The Complainant provided evidence that the disputed domain resolved to its subsidiary's official website <garnier.fr> and that mail exchange ("MX") servers were configured on the disputed domain name. At the time of this decision, the disputed domain name resolves to an error page.

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 contends that:

- (i) the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The addition of the word "afrique" does not serve to distinguish the disputed domain name from the Mark.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name, by which he is not commonly known. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner or consented to such use, and that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Respondent knew of the Mark when registering the disputed domain name and is using it in bad faith by redirecting Internet users to the official website of Garnier and by configuring MX servers.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

6.2. Requirements of paragraph 4(a) of the Policy

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Even though the word "afrique" (meaning Africa in French), preceded by a hyphen, has been added after the Mark in the disputed domain name, the entirety of the Mark is reproduced within the disputed domain name.

Although this addition of the word "afrique" in the disputed domain name may bear on the assessment of the second and third elements, the Panel finds that this addition does not prevent a finding of confusing similarity between the disputed domain name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well established that a generic Top-Level-Domain ("gTLD"), such as ".com", does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

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 come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds that the composition of the disputed domain name, adding after the Mark the geographical term “afrique” (i.e. a whole continent where products under the Mark are sold), points to an intention to confuse Internet users seeking these products in Africa or expecting the Complainant’s subsidiary Garnier. [WIPO Overview 3.0](#), section 2.5.1.

Further, in the present case, the disputed domain name resolved to the official website of Garnier. The Panel finds that the disputed domain name is targeting Internet users seeking the services of the Complainant’s subsidiary, with a risk of phishing activity, since MX servers were configured on the disputed domain name. Such circumstances cannot be considered as a bona fide offering of goods or services.

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 sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant’s arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name which is confusingly similar to the Mark.

Considering the fact that the disputed domain name resolved to the official website of the Complainant’s Garnier subsidiary, the Panel finds it impossible to believe that the Respondent, who is apparently located in France (where the Complainant is headquartered), was unaware of the Mark prior to its registration of the disputed domain name.

In this case, the Respondent, whose primary intention was likely to deceive Internet users and unfairly capitalize on the Mark, has intentionally attempted to attract Internet users by creating a likelihood of confusion with the Mark and has furthermore used the disputed domain name to configure MX servers, thus enabling him to generate email addresses, this fact creating an actual and ongoing threat to the Complainant.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <garnier-afrique.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: October 15, 2024