

ADMINISTRATIVE PANEL DECISION

CLARINS v. Declan Fenton
Case No. D2022-1077

1. The Parties

The Complainant is CLARINS, France, represented by Tmark Conseils, France.

The Respondent is Declan Fenton, Ireland.

2. The Domain Name and Registrar

The disputed domain name <clarinsskincarecenter.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2022. On March 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 1, 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 April 4, 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 April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2022. The Respondent sent two emails to the Center on April 14, 2022, and a third email on April 19, 2022.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on April 28, 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

Complainant operates a global cosmetics and make-up company which has been doing business in France for more than 60 years and is now well-established worldwide. Complainant owns numerous trademark registrations for the mark CLARINS relating to cosmetics and beauty care services, including the following:

- France Registration No. 1637194 filed January 7, 1991;
- European Union trademark Registration No. 005394283 dated October 17, 2006;
- United Kingdom Registration No. UK00905394283 dated October 17, 2006;
- Canada Registration No. LMC645123 filed June 3, 2004;
- United States of America ("US") Registration No. 1574179, registered January 2, 1990 (App. Serial No. 73746658);
- US Registration No. 0935002, registered May 30, 1972 (App. Serial No. 72361433);
- China Registration No. 13826490 dated December 30, 2013.

Complainant also owns the domain name <clarins.com> registered March 16, 1997, and <clarinsusa.com> registered November 11, 1997.

The disputed domain name was registered on February 7, 2022. The disputed domain name resolves to a website at "https://acne101.info/" displaying information relating to the treatment of skin conditions and advertising competing products with links to allow Internet users to purchase those products.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name and that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

On April 14, 2022, Respondent sent two emails to the Center stating:

"I am willing to transfer this domain to the complainant
I can list it as for sale with Godaddy, then the complainant will be able to get the domain"

and

"I have listed this domain as for sale with GoDaddy, so the complainant can now buy it if they need it for themselves."

On April 19, 2022, Respondent sent a third email to the Center stating:

"You can let the complainant know they can now go ahead and buy the domain if they want it."

6. Discussion and Findings

In order to succeed in their claim, Complainants must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

Complainant has demonstrated that it has rights in the trademark CLARINS in connection with cosmetics and beauty care services. The disputed domain name incorporates Complainant’s mark in its entirety, with the addition of the words “skin” and “care” which do not avoid a finding of confusing similarity.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark.

B. Rights or Legitimate Interests

Complainant contends that Respondent is not affiliated with or connected to Complainant in any manner, and Complainant has never authorized Respondent to use or register the name or mark CLARINS, including as a domain name. The record is devoid of any facts that establish any rights or legitimate interests of Respondent in the disputed domain name. There is no evidence that Respondent has been commonly known by the disputed domain name or that he has any rights that might predate Complainant’s adoption and use of its mark.

Respondent has not made, and is not making, a legitimate noncommercial or fair use of the disputed domain name. Respondent has not used the disputed domain name in connection with the *bona fide* offering of goods or services. The disputed domain name resolves to a website at “<https://acne101.info/>” displaying information relating to the treatment of skin conditions and advertising competing products with links to allow Internet users to purchase those products.

Thus, the record indicates that Respondent was well aware of Complainant’s mark and used the disputed domain name to lure Internet users seeking Complainant’s products to Respondent’s website in an effort to obtain commercial gain. Accordingly, Respondent is using Complainant’s trademark in the disputed domain name to divert Complainant’s customers to Respondent’s website at the disputed domain name for Respondent’s personal profit and gain.

The Panel finds that Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The record indicates that Respondent had actual knowledge of Complainant’s rights in the CLARINS mark prior to registering the disputed domain name and that Respondent registered and used the disputed domain name to divert Internet users by intentionally creating a likelihood of confusion with Complainant’s marks for Respondent’s commercial gain.

Accordingly, the Panel finds that Respondent has registered and used the disputed domain name 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 disputed domain name, <clarinsskincarecenter.com> be transferred to the Complainant.

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Sole Panelist

Date: May 12, 2022