

ADMINISTRATIVE PANEL DECISION

Olaplex, Inc. v. alirezaMasnavi alirezaMasnavi
Case No. D2022-2811

1. The Parties

The Complainant is Olaplex, Inc., United States of America (“United States”), represented by Brand Enforcement Team 101 Domain, United States.

The Respondent is alirezaMasnavi alirezaMasnavi, Tajikistan.

2. The Domain Name and Registrar

The disputed domain name, <ola-plex.com> (the “Domain Name”), is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 30, 2022. On August 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 2, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 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 August 3, 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 August 4, 2022. In accordance with the Rules, paragraph 5, the due date

for Response was August 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 26, 2022.

The Center appointed Tony Willoughby as the sole panelist in this matter on August 30, 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the registrant details of the Domain Name were redacted and not fully available in the public Whois at the time of the submission of the Complaint. In response to the Center's registrar verification request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

4. Factual Background

The Complainant is a United States-based producer of haircare products which it has been selling under its "Olaplex" name since 2014. It operates its primary website connected to its domain name, <olaplex.com> (registered on February 10, 2013).

The Complainant is the registered proprietor of United States Trademark Registration No.4553436 OLAPLEX (standard character mark) registered on June 17, 2014 (application filed on October 13, 2013) in class 3 for "Hair care preparations; Hair coloring preparations; Hair relaxing preparations; Hair styling preparations; Preparations for permanent hair waves."

The Domain Name was registered on August 28, 2021, and is connected to a website featuring images of a variety of haircare brands some of them being products of the Complainant. The language of the website is not one with which the Panel is familiar (it may be Urdu or a related language). Some of the pages feature a logo comprising the letters "la" in a circle and followed by "plex".

On July 20, 2022 and July 22, 2022, the Complainant's representative messaged the Registrar and the entity hosting the Respondent's website, drawing their attention to the Complainant's trade mark rights and seeking suspension of the Domain Name. No reply was received beyond an acknowledgment of receipt.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Complainant's OLAPLEX registered trade mark; that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Domain Name has been registered and is being used in bad faith. The Complainant seeks transfer of the Domain Name.

The essence of the Complainant's case is that the Respondent adopted the Domain Name with knowledge of the Complainant's brand and intending to use it for the purpose for which it is being used, namely to attract traffic to its website on the back of the reputation and goodwill associated with the Complainant and its OLAPLEX trade mark, yet promoting the sale of a wide range of haircare brands, many of them being brands having no association with the Complainant.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that;

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights: and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name: and
- (iii) the Domain Name has been registered and is being used in bad faith.

B. Identical or Confusingly Similar

The Domain Name comprises the Complainant's registered trade mark OLAPLEX (albeit in hyphenated form) and the ".com" generic Top Level Domain ("gTLD") identifier.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The Complainant's registered trade mark is readily recognizable in its entirety in the Domain Name. The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

C. Rights or Legitimate Interests

The Complainant contends that this is a case of typosquatting. The Respondent is using a hyphenated version of the Complainant's OLAPLEX trade mark without any permission from the Complainant to use the trade mark, to attract traffic to the Respondent's website to promote the sale of a wide range of haircare brands. For the success of its enterprise the Respondent is relying upon the attractive force of the Complainant's trade mark. The Complainant points to an image on that website of two of the Complainant's products showing that the Complainant's OLAPLEX trade mark was well-known to it.

The Complainant recites the circumstances set out in paragraph 4(c) of the Policy, any of which if found by the Panel to be present shall demonstrate rights or legitimate interests for the purposes of this element of the Policy, and contends that none of them is applicable. The Complainant contends that the use being made of the Domain Name cannot constitute a *bona fide* offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy; self evidently, the Respondent is not commonly known by the Domain Name, rendering paragraph 4(c)(ii) of the Policy inapplicable; finally, the Complainant contends that the use being made of the Domain Name is a commercial use, is not fair and is not covered by paragraph 4(c)(iii) of the Policy.

The Panel is satisfied that the Complainant has made out a *prima facie* case under this element of the Policy; in other words a case calling for an answer from the Respondent. The Panel cannot conceive of any basis upon which the Respondent could be said to have acquired rights or legitimate interests in respect of the Domain Name and, in the absence of any explanation from the Respondent, finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

For completeness, it should be mentioned, as set out in section 4 above, that some of the pages on the Respondent's website feature a logo comprising the letters "la" in a circle and followed by "plex". The combination of the circle and "la" and "plex", create "OLAPLEX", but it appears to the Panel to be a crude attempt show that the Respondent is entitled to a defence under paragraph 4(c)(ii) of the Policy. The only other reference to anything approaching that logo is an image of two of the Complainant's products prominently featuring the Complainant's OLAPLEX trade mark. As observed above, the Respondent has not sought to advance an argument along that or any other lines.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy is headed "Evidence of Registration and Use in Bad Faith" and provides as follows:

"For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

The Complainant introduces its contentions under this element of the Policy as follows:

"Respondent is misusing the domain, OLA-PLEX.COM, to confuse customers who associate the "OLAPLEX" brand with competing hair care and cosmetic products (See Annex 7). Respondent's registration of the domain prevents Complainant from reflecting their "OLAPLEX" trademark in the corresponding domain. Since the recent registration of the domain, Respondent has not used nor prepared to use it in any legitimate purpose, and is only using the domain primarily for the purpose of disrupting Complainant's business. By displaying the Complainant's product packaging on their home page and promoting the sale of competing hair care products, Respondent is misleading current and prospective customers that navigate to OLA-PLEX.COM, instead of being directed to Complainant's domain and legitimate products. By online users simply adding a dash in the middle of Complainant's primary domain name, they are redirected from Complainant's legitimate website to Respondent's infringing site. Therefore, Respondent's recent registration of OLA-PLEX.COM constitutes typosquatting activity, with the sole intention to direct online consumers to their infringing site and prevent access to Complainant's authentic "OLAPLEX" product and services. This has led the Complainant to believe the domain was registered and is being used in bad faith."

Thus, the Complainant is claiming registration and use in bad faith under sub-paragraphs (ii), (iii) and (iv) of the Policy. In the view of the Panel the claim under sub-paragraph (ii) fails because there is no evidence of a

pattern of such conduct, and the claim under sub-paragraph (iii) fails because, while disruption of the Complainant's business was an inevitable consequence of the Respondent's conduct, the Respondent's primary aim was clearly to attract traffic to its website for commercial gain by way of its unauthorised use of a close and confusingly similar variant of the Complainant's trade mark.

In the view of the Panel, the nature of the Domain Name is such that visitors to the Respondent's website are likely to believe that the website is a website of or authorised by the Complainant. On reaching the website some visitors might appreciate that the website is not associated with the Complainant, but by then the Respondent will have achieved its objective, namely a commercial opportunity to market its wide range of haircare products most of which have no connection with the Complainant.

The Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) 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 Domain Name, <ola-plex.com>, be transferred to the Complainant.

/Tony Willoughby/

Tony Willoughby

Sole Panelist

Date: September 9, 2022