

ADMINISTRATIVE PANEL DECISION

Clarins v. Minjuan543 Zhou
Case No. D2022-4162

1. The Parties

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

The Respondent is Minjuan543 Zhou, China.

2. The Domain Name and Registrar

The disputed domain name <clarinsit.shop> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 5, 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 November 8, 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 November 8, 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 November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2022.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on December 19, 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

The Complainant is one of the major actors in the field of cosmetics and make-up products. He has been doing business in France for more than 60 years where it is well-known, and is also well-established worldwide.

The Complainant began using the mark CLARINS since 1970 in the United States of America (“United States”) and throughout the world.

The Complainant is the owner of several trademark registrations for CLARINS, which have been registered in numerous countries all over the world, including the following:

- French trademark CLARINS Reg. No.. 1637194, filed on January 7, 1991, in international classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45;
- European trademark CLARINS Reg. No. 005394283, registered on October 5, 2010, in international classes 3, 5, 10, 16, 21, and 44;
- UK trademark CLARINS Reg. No. UK00905394283 dated October 17, 2006 in international classes 3, 5, 10, 16, 21, and 44;
- Canadian Trademark CLARINS Reg. No. TMA645123, registered on July 29, 2004 in international class 3;
- United States Trademark CLARINS Reg. No. 73746658, filed on August 17, 1988 in international class 3;
- United States Trademark CLARINS Reg. No. 72361433 filed on June 2, 1970 in international class 3;

Based on the record, the disputed domain name was registered on May 31, 2022 and directed to an active website where the Respondent reproduced the trademark CLARINS prominently on the website imitating the Complainant’s website, using the same visual to sell infringing products.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the CLARINS trademark because the disputed domain name contains the CLARINS trademark in its entirety.

In fact, is reproduced identically in first position the trademark CLARINS with the addition of the element “it”.

It seems clear that the addition of the element “it” refers to the geographic extension “.it” (Italy). This is confirmed by the fact that the website is in Italian.

The Complainant has established rights in the CLARINS trademark based on its longstanding use and fame.

The Respondent had knowledge of the Complainant’s prior rights, as the Respondent reproduces the Complainant’s prior trademark CLARINS and uses of the same visuals to sell cosmetics products.

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant

has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name including its trademarks.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith misleading the consumers and diverting them from the real and official Complainant's website, in order to create a commercial gain for himself.

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

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

In the present case, the disputed domain name <clarinsit.shop> is similar to the Complainant's registered well-known trademark CLARINS.

The Panel finds that the Complainant's rights in the CLARINS trademark have been established pursuant to the first element of the Policy.

Moreover, it is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the Top-Level Domain extension ".shop" may be disregarded (which is, also, in this case, directly related to the Complainant's main activities). See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the addition of the element "it", Section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."; see also *Accor v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / warnier francis*, WIPO Case No. [D2021-2247](#).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant's mark.

Therefore, the Panel finds the first element of the Policy has been met.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademarks.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

In *Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#), the panel stated that: “in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated *bona fide* or legitimate use of the domain name could be claimed by Respondent.”

The Panel finds no evidence that the Respondent has used, or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of the Policy has, therefore, been met.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent’s registration and use of the disputed domain name is in bad faith, which the Respondent did not rebut.

On the evidence adduced, it is improbable that the registrant of the disputed domain name was unaware of the Complainant’s name, trademark, reputation and goodwill when the disputed domain name was registered.

In *The Nasdaq Stock Market, Inc., v. Hamid Reza Mohammad Pouran*, WIPO Case No. [D2002-0770](#), the panel held: “The Respondent knew or should have known of the existence of the Complainant, [as] the Complainant’s trademark [was] widely publicized globally and constantly featured throughout the Internet, and thus the Panel decides that the disputed domain names were registered in bad faith”.

The Respondent, by using the disputed domain name, is intentionally misleading the consumers and confusing them trying to attract them to a website purportedly offering unauthorized versions of the Complainant’s products, as well as cosmetics of other brands in direct competition with the Complainant’s official products. The Panel finds that such behavior is evidence of bad faith.

On the basis of the above, the Panel finds that the Respondent registered the disputed domain name to attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark (Policy, paragraph 4(b)(iv), and to disrupt the business of the Complainant (Policy, paragraph 4(b)(iii)).

Accordingly, pursuant to paragraph 4(b) of the Policy, this Panel finds that disputed domain name was registered and has been used in bad faith by the Respondent.

On this basis the Panel finds that the Complainant has satisfied the third and last point of the Policy, paragraph 4(a)(iii).

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 <clarinsit.shop> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: January 2, 2023