

ADMINISTRATIVE PANEL DECISION

Clarins v. DO THANH LUAN

Case No. D2022-4755

1. The Parties

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

The Respondent is DO THANH LUAN, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <clarinsth.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 December 12, 2022. On December 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 December 15, 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 December 16, 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 January 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed Alfred Meijboom as the sole panelist in this matter on February 13, 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 which has been doing business in France and elsewhere for more than 60 years. The Complainant owns several trademarks for, *inter alia*, cosmetics, including:

- United States of America federal trademark CLARINS with registration number 0935002, of May 30, 1972;
- Thai national trademark CLARINS with registration number Kor76352 of March 24, 1988;
- French national trademark CLARINS with registration number 1637194 of January 7, 1991; and
- European Union trademark CLARINS with registration number 005394283 of October 5, 2010. (the "CLARINS Trademark").

The Complainant also operates a website at "www.clarins.com", as well as a Thai website at "www.clarins.co.th" since May 21, 2013.

The Respondent registered the disputed domain name on August 11, 2022. The Complainant has submitted evidence showing that at the time the Complaint was filed the disputed domain name resolved to a website in English and in Thai which offered a double serum product under the CLARINS Trademark.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the CLARINS Trademark as it entirely incorporates the Complainant's trademark and the geographic reference "th" which refers to Thailand.

According to the Complainant, it does not know the Respondent, who is not affiliated in any manner to the Complainant, and has never been authorized to use or register in any way the name "Clarins", including as a domain name. The Complainant further alleges that the Respondent is not making a noncommercial or fair use of the disputed domain name, since it has been used in relation with a website which is unauthorized, offering cosmetic serum under the CLARINS Trademark. The Complainant claims that the Respondent's intention is to divert consumers for commercial gain to its website under the disputed domain name by taking unfair advantage of the goodwill and reputation of the CLARINS Trademark, and the Respondent has misled consumers and diverted them from the Complainant's genuine website in order to create a commercial gain for itself.

The Complainant also alleges that the Respondent has registered and is using the disputed domain name in bad faith. According to the Complainant, the Respondent obviously knew the prior rights and wide use of the CLARINS Trademark by the Complainant because of the numerous similarities between the website under the disputed domain name and the Complainant's prior rights in the CLARINS Trademark. When the Respondent registered the disputed domain name, it had already been a respondent in two UDRP complaints regarding its registration and use of the domain names <clarins-th.live>, <clarins-th.shop>, <clarins-th.com> and <clarins-th.net>, which cases were both decided on May 24, 2022 (*Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan*, WIPO Case No. [D2022-1322](#) and *Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan, Lilla Group*, WIPO Case No. [D2022-1178](#)). The Complainant further alleges that the Respondent has taken steps to cover its identity, which raises suspicions on its real intentions. According to the Complainant, the Respondent uses the disputed domain name in bad faith, primarily for the purpose of creating a likelihood of confusion with the CLARINS Trademark as to the source, sponsorship, affiliation by the Complainant.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, 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;
- (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

It is well established that the generic Top-Level Domain ("gTLD") ".com" should typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy.

The Panel finds that the disputed domain name is confusingly similar to the CLARINS Trademark. The disputed domain name incorporates the CLARINS Trademark in its entirety, and merely adds the letters "th", which can be the geographical indicator of Thailand, which does not prevent a finding of confusing similarity between the disputed domain name and the CLARINS Trademark under the Policy (see *e.g.*, *Syngenta Participations AG v. Who Is Agent / Rogerio Biasotto*, WIPO Case No. [D2015-0253](#); and *Philip Morris USA Inc. v. Domain Admin / Whois Privacy Corp.*, WIPO Case No. [D2016-0910](#)).

Consequently, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

The Complainant must show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (*e.g.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel takes note of the Complainant's various allegations and more specifically that no authorization has been given by the Complainant to the Respondent to use the CLARINS Trademark or to register the disputed domain name, and that the disputed domain name resolved to a website that intentionally created confusion as to its source, sponsorship, affiliation, or endorsement by the Complainant. The Panel is satisfied that the Respondent used the disputed domain name to resolve to a website offering the Complainant's official product under the CLARINS Trademark (and displaying the Complainant's product image) with the intention to mislead Internet users into believing that the Respondent's website is authorized

by the Complainant, which does not constitute a *bona fide* offering of goods. See section 2.13 of the [WIPO Overview 3.0](#).

Moreover, the Panel finds that the composition of the disputed domain name incorporating the Complainant's trademark with the letters "th" carries a risk of implied affiliation with the Complainant and cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

The allegations of the Complainant remain unchallenged. There is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b)(ii) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith if the Respondent has "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 [it has] engaged in a pattern of such conduct", and pursuant to paragraph 4(b)(iv) of the Policy an attempt "to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [its] web site or location or of a product or service on [its] web site or location" constitutes registration and use of the disputed domain name in bad faith.

The Respondent has undisputedly been involved in earlier UDRP cases involving domain names which also included the CLARINS Trademark and in connection to the geographical indicator "th", some of which domain names were also used to offer a double serum under the CLARINS Trademark. The panel in *Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan, Lilla Group*, WIPO Case No. [D2022-1178](#) found it "apparent (...) that the Respondent has intentionally used each of the disputed domain names to resolve to a website that uses representations of the CLARINS mark and of the Complainant's red cylinder mark and of the CLARINS Double Serum product in an effort to attract Internet users and to confuse them into thinking that each website belongs to, or is authorised by, the Complainant", which situation is very much alike, if not identical to the situation at hand as the disputed domain name also resolves to a website which offers a CLARINS double serum product for sale, which product is likely the same as the one the Respondent offered under the domain names involved in WIPO Case No. [D2022-1178](#). The aforementioned case and *Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan*, WIPO Case No. [D2022-1322](#) were both decided against the Respondent on May 24, 2022, and the Respondent registered the disputed domain name slightly more than two months later, on August 11, 2022, and the Respondent used the disputed domain name for the same activities which another panel found to constitute use in bad faith. In the absence of a Response or a logical explanation indicating reasons for registration of the disputed domain name, this Panel is satisfied that the Respondent must have registered the disputed domain name with the CLARINS Trademark in mind, which registration was made in bad faith. And the Panel is also satisfied that the Respondent's use of the disputed domain name is also in bad faith as he is engaged in a pattern of targeting the Complainant and its CLARINS Trademark in order to mislead Internet users into believing that its website and the products sold are associated with the Complainant.

Consequently, the third and last element of paragraph 4(a) of the Policy is also met.

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 <clarinsth.com> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: February 19, 2023