

ADMINISTRATIVE PANEL DECISION

LPG Systems SAS v. César Musso, Themis Crea
Case No. D2023-0226

1. The Parties

The Complainant is LPG Systems SAS, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is César Musso, Themis Crea, France.

2. The Domain Names and Registrar

The disputed domain names <lpg-clinic.com>, <lpg-israel.com>, <lpg-tel-aviv.com>, and <lpg-telaviv.com> are registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2023. On January 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 2023, 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 January 26, 2023.

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 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.



The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on February 24, 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 produces professional machines for use in cellular stimulation and treatment of connective tissue and develops its activities in the health, beauty and wellness industries. It has been founded in 1986 in France and has a presence in 110 countries.

The Complainant is the owner of several trademarks on the term “lpg” across various jurisdictions, including (hereafter the LPG Trademark):

- The Israeli trademark LPG, Number 115051, registered on April 14, 1999, in class 10;
- The Israeli trademark LPG, Number 115052, registered on April 14, 1999, in class 42;
- The United Kingdom trademark  , Number UK00916798671, registered on October 4, 2017, in classes 3, 9, 10, 18, 24, 25, 28, and 44; and
- The European Union trademark  , Number 016798671, registered on October 4, 2017, in classes 3, 9, 10, 18, 24, 25, 28, and 44.

The Complainant is also the owner of several trademarks on the term “endermologie” across various jurisdictions, including (hereafter the ENDERMOLOGIE Trademark):

- The Israeli trademark ENDERMOLOGIE, Number 115049, registered on November 4, 1998, in class 10; and
- The Israeli trademark ENDERMOLOGIE, Number 115050, registered on November 4, 1998, in class 42.

The Complainant also owns the following domain names:

- <lpgsystems.com>, registered on June 3, 1998;
- <endermologie.com>, registered on July 14, 1996.

The disputed domain names <lpg-clinic.com>, <lpg-israel.com>, <lpg-telaviv.com>, and <lpg-tel-aviv.com> (hereafter the Disputed Domain Names) were registered on December 22, 2020. The Disputed Domain Name <lpg-clinic.com> resolves to an active website reproducing the Complainant’s trademarks and pictures of the Complainant’s own devices. The Disputed Domain Names <lpg-israel.com>, <lpg-telaviv.com>, and <lpg-tel-aviv.com> redirect to the website at the Disputed Domain Name <lpg-clinic.com>.

5. Parties’ Contentions

A. Complainant

First of all, the Complainant asserts that the Disputed Domain Names are confusingly similar to its prior LPG Trademark, since they reproduce it in its entirety, simply adding hyphens and the generic term “clinic” or the geographical terms “israel” or “tel aviv”, respectively, to the end of the trademark, and the generic Top-Level Domain (“gTLD”) “.com”, which is viewed as a standard registration requirement. The Complainant adds that (i) the mere addition of these generic or geographical terms to its trademark does not negate the confusing similarity between the Disputed Domain Names and the Complainant’s trademark; and that (ii) the addition of hyphens does nothing to distinguish the Disputed Domain Names from the Complainant’s LPG Trademarks. The Complainant also points out that the Respondent’s use of the Disputed Domain Names to

resolve or redirect users to a website reproducing the Complainant's trademarks in an effort to pass itself off as the Complainant, is further evidence that the Disputed Domain Names are confusingly similar to the Complainant's LPG Trademark.

Secondly, the Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names, since the registration of the LPG Trademarks is *prima facie* evidence of the Complainant's ownership of these trademarks and exclusive right to use these trademarks in commerce. The Complainant adds that the Respondent is not commonly known by the Disputed Domain Names and that it has not been licensed, authorized, or permitted by the Complainant to register domain names incorporating the Complainant's trademarks. On the contrary, the Complainant's terms and conditions expressly prohibit such act. Therefore, the Complainant considers that the Respondent's use of the Disputed Domain Names cannot constitute a legitimate use. Nor is the Respondent making a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Disputed Domain Names, since the Respondent acts in order to take advantage of the fame and goodwill of the Complainant. Finally, the Complainant adds that while no evidence has been found that the Disputed Domain Names have actively been used as part of a fraud, the presence of mail exchange (MX) records on the Disputed Domain Name <lpgetelaviv.com>, coupled with the Respondent's use of the Disputed Domain Names, which may confuse unsuspecting users into believing it is associated with or affiliated with the Complainant, strongly implies that the Disputed Domain Names could be used as part of an email phishing scheme in the future.

Lastly, the Complainant asserts that the Disputed Domain Names were registered and are being used in bad faith. First of all, the Complainant argues that its trademarks are known internationally and are used since 1995, well before the Respondent's registration of the Disputed Domain Names. Then, by choosing four domain names comprising the LPG Trademarks, the Respondent has demonstrated its knowledge and familiarity with the Complainant. In fact, the Respondent includes the registered trademark symbol ® when mentioning the Complainant's LPG and ENDERMOLOGIE Trademarks on its website, which thereby demonstrates the Respondent's awareness of the Complainant's rights in these names. Secondly, the Complainant submits that the Respondent is creating a likelihood of confusion with the Complainant and its trademarks by registering four domain names that comprise the Complainant's LPG Trademarks and using them to redirect users to its website, where it displays the LPG and ENDERMOLOGIE Trademarks as well as images of the Complainant's devices. As such, the Respondent is attempting to cause consumer confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Names in order to increase traffic to its website for its own commercial gain. Thus, the Respondent has intentionally misappropriated the Complainant's LPG Trademarks as a way of redirecting Internet users searching for the Complainant to the Respondent's website. Moreover, the Respondent has ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding, which can be considered as an indication of bad faith registration and use of the Disputed Domain Names.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the complainant shall prove the following three elements:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the LPG Trademark.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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 Names.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Regarding the Disputed Domain Names, the Panel finds that they are composed of:

- the LPG Trademark;
- a hyphen;
- the word "clinic", "israel", "tel-aviv", or "telaviv"; and
- the gTLD ".com", it being specified that the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

According to prior UDRP panel decisions, it is sufficient that the disputed domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing. The mere addition of descriptive or geographical term to a mark does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

Regarding the Disputed Domain Name <lpg-clinic.com>, the Panel considers that the insertion of the word "clinic" after a hyphen and the LPG Trademark does not prevent a finding of confusing similarity.

Regarding the Disputed Domain Names <lpg-israel.com>, <lpg-tel-aviv.com>, and <lpg-telaviv.com>, the Panel considers in the same way that the addition to the Complainant's LPG Trademark of a hyphen and other terms does not prevent a finding of confusing similarity either.

Therefore, the Panel holds that the Disputed Domain Names are confusingly similar to the Complainant's trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Names.

These circumstances are:

- before any notice of the dispute to the respondent, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

- the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceeding is on the complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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 *prima facie* that a 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. Indeed, it appears that the Respondent has not received any authorization to use the LPG Trademark in any manner, including in domain names.

Moreover, the Panel finds that the Complainant has provided evidence that the Respondent is not commonly known by the Disputed Domain Names. Indeed, according to prior UDRP panel decisions, for this condition to apply, the respondent must be “commonly known” (as opposed to merely incidentally being known) by the relevant moniker (*e.g.*, a personal name, nickname, or corporate identifier), apart from the domain name (see section 2.3 of the [WIPO Overview 3.0](#)). In this case, the Respondent is known as César Musso, Themis Crea.

Furthermore, the Panel finds that the composition of the Disputed Domain Names is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1. Particularly, the Panel notes that with regards the Disputed Domain Name <lpg-clinic.com>, the addition of “clinic” is descriptive of the Complainant’s services in the health, beauty, and wellness industry. Similarly, the addition of geographic terms to the remaining Disputed Domain Names conveys the impression that such Disputed Domain Names are affiliated with the Complainant’s operations in those geographic locations.

Finally, the Panel notes that the Respondent did reply to the Complainant’s contentions, in order to demonstrate its rights or legitimate interests in the Disputed Domain Names.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Names have been registered and are being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent’s bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

First, the Panel considers that it is established of the Complainant's LPG Trademark were registered and used well before the registration of the Disputed Domain Names and that the Respondent was aware of this trademark, since (i) the registered trademark symbol ® is included when the Complainant's LPG Trademark is reproduced at the website linked to the Disputed Domain Names, and (ii) this website includes images of the Complainant's devices.

Further, UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The Panel also considers that the impression given by the Disputed Domain Names and the website to which they reach, will lead Internet users to believe that this website is managed by a person affiliated with the Complainant when this is not the case.

Accordingly, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website reachable at the Disputed Domain Names by creating a likelihood of confusion with the Complainant and its LPG Trademark as to the source, sponsorship, affiliation, or endorsement.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Names in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

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 names, <lpg-clinic.com>, <lpg-israel.com>, <lpg-tel-aviv.com>, and <lpg-telaviv.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: March 10, 2023