

ADMINISTRATIVE PANEL DECISION

Laboratoires M&L v. Junyuan Du
Case No. D2023-1604

1. The Parties

The Complainant is Laboratoires M&L, France, represented by IP Twins, France.

The Respondent is Junyuan Du, China.

2. The Domain Name and Registrar

The disputed domain name <cliniqueloccitane.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 14, 2023, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 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 amended Complaint on April 19, 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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on June 19, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the L'Occitane Group, a global, natural and organic ingredient-based cosmetics manufacturer and retailer. The Group has several brands, one of them being L'OCCITANE EN PROVENCE. In 2015, the L'Occitane Group counted 2,797 retail locations on all continents throughout the world, with 1,384 owned retail stores. The Group employs more than 8,000 people around the world and generated a revenue of more than USD 1 billion in 2015.

The Complainant owns numerous trademark registrations in the term L'OCCITANE, such as International trademark registration no. 1006051 registered on October 8, 2008.

The Complainant is active in social media such as the Facebook.

According to the Complainant, the Respondent registered the Domain Name on October 28, 2022. At the time of the Complaint and the time of drafting the Decision, the Domain Name resolved to a webpage that appears to offer various products for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name. The Complainant provides evidence of trademark registrations and argues that the Complainant's trademark enjoys a widespread reputation and goodwill through the continuous and long-standing use. The Domain Name reproduces the L'OCCITANE trademark in its entirety.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent reproduces the Complainant's trademark in the Domain Name without any license or authorization from the Complainant. The Complainant asserts that the Respondent is not making any commercial or fair use of the Domain Name. The Respondent's use of the Domain Name demonstrates no intent to use it in connection with a *bona fide* offering of goods or services. Whether or not products are actually sold on the Respondent's website, and whether any such products are genuine or counterfeit, the website gives the false impression that it is owned, operated or endorsed by the Complainant.

The Complainant believes that the Respondent was aware of the Complainant and its trademark when the Respondent registered the Domain Name. The Respondent's choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its trademark. The Complainant sees no possible way whatsoever that the Respondent would use the Domain Name in connection with a *bona fide* offer of products or services. The current use of the Domain Name in connection with an online store is evidence of bad faith on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has established that it has rights in the trademark L'OCCITANE. In this case, the Domain Name reproduces the Complainant's trademark, with the omission of the apostrophe and the addition of "clinique". This does not prevent a finding of confusing similarity between the Domain Name and the trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, 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 a *prima facie* case that the 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of 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. The use of the Domain Name is not *bona fide*, see [WIPO Overview 3.0](#), section 2.8. Moreover, the composition of the Domain Name, incorporating the Complainant's trademark in its entirety with an addition of "Clinique", for a website purporting to sell products under the brand CLINIQUE and L'OCCITANE at discounted prices does not give rise to rights or legitimate interests in the disputed domain name. On the contrary, it seems the Respondent has combined within the disputed domain name two competing brands with a likely intention of expanding the reach of its website.

The Panel finds that the Complainant has made out an un rebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

It is probable that the Respondent was aware of the Complainant and its prior rights. The composition of the Domain Name and the fame of the Complainant's trademark point in that direction.

The use of the Domain Name, indicates that the Respondent's intention is to mislead Internet users to believe that the Respondent's webpage is owned, operated or endorsed by, or affiliated with, the Complainant (or even some sort of collaboration between the CLINIQUE and L'OCCITANE brands).

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 the Domain Name <cliniqueloccitane.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: July 3, 2023