

ADMINISTRATIVE PANEL DECISION

MCE v. OOO Progress Profi
Case No. D2023-2987

1. The Parties

The Complainant is MCE, France, represented by Plasseraud IP, Spain.

The Respondent is OOO Progress Profi, Russian Federation.

2. The Domain Names and Registrar

The disputed domain names <biosthetique.store>, <labiosthetique.store>, <labiosthetique-store.shop>, <labiosthetiquestore.shop>, and <labiosthetiquestore.store> (the “Domain Names”) are registered with RU-CENTER-MSK (Regional Network Information Center, JSC dba RU-CENTER) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On July 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Redacted for Privacy, Privacy Protection Service - whoisproxy.ru) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 28, 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 July 31, 2023.

The Registrar also indicated that the language of the Registration Agreement for the Domain Names is Russian. On July 28, 2023, the Center sent an email communication to the Parties inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Russian; or submit a request for English to be the language of the administrative proceedings. The Respondent was also invited to comment on the language of the proceeding. On July 31, 2023, the Complainant reconfirmed its request that English be the language of the proceedings. The Respondent did not provide any comments regarding the language of the proceedings.

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 in English and Russian, and the proceedings commenced on August 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on September 8, 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 French cosmetics company founded in the 1950s. Currently, it produces the cosmetic products under the La Biosthétique brand. The Complainant operates, among others, in Russian Federation.

The Complainant is the owner of numerous LA BIOSTHETIQUE trademark registrations, including the International Trademark Registration for LA BIOSTHETIQUE, No. 839640 registered on October 6, 2004.

The Complainant is also the owner of the domain names incorporating its LA BIOSTHETIQUE trademark, including <labiosthetique.com>.

The Domain Names were registered on October 6, 2021.

At the time of submitting the Complaint, all the Domain Names resolved to inactive websites. As of the date of this decision, the Domain Names still resolve to inactive websites.

5. Parties’ Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the LA BIOSTHETIQUE trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Names.

Third, the Complainant contends that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters – Language of the Proceeding

The language of the Registration Agreement for the Domain Names is Russian. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English. First, the Complainant notes that most of the evidence in support of the Complainant’s case is available in English. Consequently, translating all the documents into Russian would represent a significant burden on the Complainant’s part. Second, the Complainant indicates that the Domain Names contain the generic Top-Level Domains (“gTLDs”) “.shop” and “.store” in English language. Third, the Complainant argues that the registration of the Domain Names containing the internationally recognized LA BIOTHETIQUE trademark indicates that the Respondent is able to use the English language.

The Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on let alone object to the Complainant’s arguments concerning the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Names are 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 the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Identical or Confusingly Similar

Under the first requirement, the Complainant must establish that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid LA BIOSTHETIQUE trademarks registrations. The Domain Names either incorporate this trademark in its entirety, or a dominant feature (the term “biosthetique”) of this trademark is recognizable in the Domain Names. UDRP panels have consistently held that 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. See section 1.7, [WIPO Overview 3.0](#).

The addition of the term “store” in the Domain Names does not prevent a finding of confusing similarity between the Domain Names and the Complainant’s trademark. As numerous UDRP panels have held, where 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 section 1.8, [WIPO Overview 3.0](#).

The gTLDs “.store” and “.shop” in the Domain Names are viewed as a standard registration requirement and as such are disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the LA BIOSTHETIQUE trademark in which the Complainant has rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second requirement, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant’s LA BIOSTHETIQUE trademark registrations predate the Respondent’s registration of the Domain Names. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the LA BIOSTHETIQUE trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Names.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Names in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Names. On the contrary, at the time of submitting the Complaint and as of the date of this Decision, the Domain Names have resolved to inactive websites. In fact, it does not result from the case evidence that the Domain Names have been used in any active way to date.

Given the above, the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainant must prove that the Domain Names were registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the LA BIOSTHETIQUE trademark predate the registration of the Domain Names. The Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration, as it has been proven to the Panel's satisfaction that the Complainant's LA BIOSTHETIQUE trademark is well known and unique to the Complainant. Thus, the Respondent could not possibly ignore the reputation of products under this trademark. In sum, the Respondent registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's LA BIOSTHETIQUE trademark.

Moreover, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Names have resolved to inactive websites. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Names does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3 of the [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainant's trademark, the Respondent's failure to participate in the proceeding, and the implausible good faith use to which the Domain Names may be intrinsically put, the Panel agrees with the above.

Finally, the Respondent's use of privacy services that concealed registrant information is a further evidence of bad faith.

For the reasons discussed above, the Panel finds that the Complainants have proved the requirements under 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 that the Domain Names <biosthetique.store>, <labiosthetique.store>, <labiosthetiquestore.shop>, <labiosthetiquestore.shop>, and <labiosthetiquestore.store> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: September 22, 2022