

## **ADMINISTRATIVE PANEL DECISION**

### **CLARINS v. DO THANH LUAN**

#### **Case No. D2023-3103**

#### **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 <clarinssusa.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 July 19, 2023. On July 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (referred to as “IDENTITY UNDISCLOSED”) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 24, 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 July 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 14, 2023.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on August 16, 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 one of the major actors in the field of cosmetics and make-up products. It has been doing business in France for more than 60 years.

The Complainant holds numerous trademarks consisting of the word “Clarins” on a worldwide basis, such as:

- French trademark registration CLARINS n° 1637194, filed on January 7, 1991, and registered on June 14, 1991, and covering notably cosmetics in class 03 and beauty care services in class 44;
- European Union trademark registration CLARINS n° 005394283, registered on October 5, 2010, and covering notably cosmetics in class 03 and cosmetic and beauty care services in class 44;
- UK trademark registration CLARINS N°UK00905394283, filed on October 17, 2006, and registered on October 5, 2010, and covering notably cosmetics in class 3 and cosmetic and beauty care services in class 44;
- Canadian trademark registration CLARINS n° LMC645123, filed on June 3, 2004, and registered on July 29, 2005, and covering cosmetic products in class 3;
- United States of America (“United States”) trademark registration CLARINS n° 73746658, filed on August 17, 1988, and registered on January 2, 1990, and covering cosmetics and make-up goods in class 3;
- United States trademark registration CLARINS n° 72361433, filed on June 2, 1970, and registered on May 30, 1972, and covering cosmetics and make-up goods in class 3;
- Singaporean trademark registration CLARINS N° T7358841Z, filed on September 13, 1973, and registered on March 5, 1976, and covering beauty products in class 3.

The Complainant has further owned the domain name <clarins.com> since March 16, 1997, as well as <clarinsusa.com> since November 12, 1997.

The disputed domain name was registered on May 29, 2023.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant first alleges that the disputed domain name is confusingly similar to its trademark CLARINS as it entirely incorporates its trademark, with the addition of the term “usa” that refers to the United States. The mere addition of the letter “s”, which is meant to reproduce the Complainant’s trademark with a typography mistake, does obviously not exclude the resulting likelihood of confusion.

The Complainant then affirms that the Respondent has no rights or legitimate interests in the disputed domain name. It has never authorized the Respondent to use its trademark CLARINS. The Respondent is not affiliated to the Complainant in any way. The disputed domain name further leads to a website that infringes upon the Complainant’s rights by reproducing the Complainant’s official website, thus reproducing the CLARINS trademark on numerous accounts and making users believe that the concerned website would be an official website. Such use cannot amount to a *bona fide* use.

Taking into account the very strong reputation and distinctiveness enjoyed by the Complainant’s trademark, the Complainant finally considers that the Respondent was obviously aware of its CLARINS trademark when it registered the disputed domain name. The above-described use made of the disputed domain name further clearly demonstrates that the disputed domain name is being used in bad faith.

##### B. Respondent

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “[...] decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trademark or a 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

The Complainant proves to hold several trademarks consisting of the term CLARINS.

UDRP panels widely agree that incorporating a trademark into a domain name, in its entirety, can be sufficient to establish that the domain name is confusingly similar to a registered trademark for purpose of the Policy (see, e.g., *Uniroyal Engineered Products, Inc. v. Nauga Network Services*, WIPO Case No. [D2000-0503](#); *Thaigem Global Marketing Limited v. Sanchai Aree*, WIPO Case No. [D2002-0358](#); and *F. Hoffmann-La Roche AG v. Relish Entreprises*, WIPO Case No. [D2007-1629](#)).

Such happens to be the case here. The addition of a geographical term such as “usa” does not exclude the confusing similarity (see, among others: *Playboy Entreprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *Inter-IKEA Systems B.V. v. Evezon Co. Ltd*, WIPO Case No. [D2000-0437](#); *Dell Computer Corporation .v. MTO C.A. and Diabetes Education Long Life*, WIPO Case No. [D2002-0363](#)).

Considering the fact that the Top-Level Domain is disregarded under the first element confusing similarity test, the disputed domain name is a typosquatted version of the Complainant’s trademark with the addition of a second “s” and with the additional term “usa”, a difference obviously irrelevant to exclude the resulting confusing similarity between the disputed domain name and the Complainant’s trademark (sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

As a result, the Panel considers paragraph 4(a)(i) of the Policy to be satisfied.

### 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.

As the panel stated in *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#), demonstrating that the Respondent has no rights or legitimate interests in the domain name “would require complainant to prove a negative, a difficult, if not impossible, task.” Thus, in that decision, the panel opined that “[w]here a complainant has asserted that the respondent has no rights or legitimate interests in respect of the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting this assertion.” Following that decision, subsequent UDRP panels acknowledged that it is deemed sufficient for a complainant to make a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name. Once a *prima facie* case has been made, the burden of production shifts to the respondent to come forward with evidence to demonstrate its rights or legitimate interests. If it fails to do so, the complainant is deemed to have satisfied to paragraph 4(a)(ii) of the Policy (see, e.g., section 2.1, [WIPO Overview 3.0](#)).

In the present case, the Complainant is the owner of several CLARINS trademarks. The Complainant has no business or other relationships with the Respondent.

The Complainant has made a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name.

On his side, the Respondent has not answered to the Complaint.

Considering the absence of a Response and the fact that the Respondent is neither commonly known by the disputed domain name, nor has made a legitimate noncommercial or fair use of the disputed domain name, and on the contrary, uses the disputed domain name in order to host a website impersonating the Complainant, the Panel finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

Consequently, in light of the above, the Panel considers paragraph 4(a)(ii) of the Policy to be fulfilled.

### **C. Registered and Used in Bad Faith**

For a complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Bad faith requires the Respondent to be aware of the Complainant's trademarks. In the present case, the Complainant owns several CLARINS trademarks, which enjoy a strong reputation. Moreover, taking into account the fact that the website attached to the disputed domain name replicates the Complainant's official website and reproduces as a result the Complainant's official trademark and logo, the Panel finds that the Respondent was aware of the Complainant's trademarks when he registered the disputed domain name.

The disputed domain name resolves to a website that is identical to the Complainant's official website, and reproduces the Complainant's official logo. As a result, a visitor who unknowingly visits the disputed domain name seeking to access the Complainant's services after having made a typo may input its log-in credentials into the Respondent's site, allowing the Respondent to harvest the usernames and passwords of the Complainant's users an apparent phishing attempt. Such a use of a domain name, in a blatant targeting of the Complainant's trademark rights, obviously amounts to a use in bad faith (see, for instance: *Fenix International Limited v. Leandro Vinicius Bau*, WIPO Case No. [D2021-0584](#)).

It is worth pointing out that the Respondent has already been involved in earlier UDRP cases involving domain names which also included the CLARINS trademark (*Clarins v. DO THANH LUAN*, WIPO Case No. [D2022-4755](#); *Clarins v. Privacy Service Provided by Withheld for Privacy ehf / Do Thanh Luan, Lilla Group*, WIPO Case No. [D2022-1178](#)). In both cases, the panel 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 a result, the Panel is also satisfied that the Respondent is also 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 Panel is of the opinion that the disputed domain name has been registered and is being used in bad faith under the 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 disputed domain name <clarinssusa.com> be transferred to the Complainant.

*/Philippe Gilliéron/*

**Philippe Gilliéron**

Sole Panelist

Date: August 22, 2023