

ADMINISTRATIVE PANEL DECISION

Laboratoires M&L v. George Lewington, GLS
Case No. D2023-3917

1. The Parties

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

The Respondent is George Lewington, GLS, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <melvitacosm.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2023. On September 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 20, 2023, 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 (redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 25, 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 September 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. On September 25, 2023, the Center received an email communication from the Respondent. On October 18, 2023, the Center notified the Parties of the Commencement of Panel Appointment Process.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 20, 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 part of French multinational cosmetics and well-being products company, L'Occitane Group which operates a business under multiple brands in 2,700 retail locations in 90 countries throughout the world, with turnover exceeding EUR 1.6 billion in 2020. The Complainant is the owner of several trademark registrations worldwide for the mark MELVITA, including, for example: Australian Trademark Registration No. 1279269 for MELVITA, registered on November 27, 2008, in classes 3, 5, and 30 and United States Trademark Registration No. 5652131 for MELVITA, registered on January 15, 2019, in classes 3, 5 and 30.

The Complainant's online promotion of the MELVITA trademark includes use of the domain name <melvita.com>.

The Respondent registered the Disputed Domain Name <melvitacosm.com> on November 5, 2009. The Disputed Domain Name resolves to a commercial website that displays the MELVITA trademark and offers for sale cosmetics and treatments for erectile dysfunction.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations internationally for the mark MELVITA as *prima facie* evidence of ownership.

The Complainant submits that its rights in the mark MELVITA predates the Respondent's registration of the Disputed Domain Name. It submits that The Disputed Domain Name incorporates the Complainant's MELVITA trademark with the addition of the term "cosm", which it says, relates to 'cosmetics' and that the identity is not removed by the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that "[t]he Complainant never granted the Respondent any authorization, consent, right, license, exclusive or not, to use the trademark MELVITA within the [D]isputed [D]omain [N]ame or in any other way for that matter". It also contends that "[n]one of the circumstances which set out how a respondent can prove his rights or legitimate interests, are present in this case".

Finally, the Complainant alleges that the Respondent registered and is using the Disputed Domain Name in bad faith and that "[t]he Respondent necessarily had the Complainant's name and trademark in mind when registering the [Disputed D]omain [N]ame". It also contends, on the issue of bad faith use, that "the [Disputed D]omain [N]ame resolves to an active page reproducing the Complainant's trademarked logo".

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark MELVITA in numerous jurisdictions. The domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the MELVITA trademark, the Panel observes that the Disputed Domain Name comprises: (a) the Complainant’s trademark MELVITA; (b) followed by the term “cosm”; (c) followed by the gTLD “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: “melvitacosm” (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In this case, the Disputed Domain Name identically incorporates the entirety of the Complainant’s trademark. It is also well-established 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 [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Respondent reproduces the Complainant’s prior registered trademark in the Disputed Domain Name without any license or authorization from the Complainant; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name MELVITA, and has not been commonly known by the name MELVITA; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain.

The Respondent is not using the Disputed Domain Name with legitimate interests in a domain name incorporating the Complainant’s mark, and is not commonly known by the Disputed Domain Name. The Panel accepts the Complainant’s uncontested submission that use to direct Internet traffic to a webpage that “displays the trademarked MELVITA logo of the Complainant and contains content related to MELVITA. Since said website does not display any element as to clarify or disclaim the relationship between the

Respondent and the Complainant, the Complainant submits that no rights or legitimate interests relating to the Respondent in the [D]isputed [D]omain [N]ame can be found”.

In this Panel’s view, the composition of the Disputed Domain Name which reproduces the entirety of the MELVITA trademark added by the term “cosm” which may be considered as a reference to the Complainant’s products does indicate an awareness and targeting of the Complainant with the intention to take unfair advantage of its trademark, which does not support a finding of any rights or legitimate interests.

The Panel finds for the Complainant on this element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy requires that the Complainant must also demonstrate that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, given the composition of the Disputed Domain Name and the well-known status of the Complainant’s trademark, the Panel is satisfied that the Respondent targeted the Complainant’s trademark MELVITA when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant’s trademark (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the Complainant’s evidence is that the Disputed Domain Name resolves to a commercial website unaffiliated with the Complainant that nonetheless displays the Complainant’s trademark with no disclaimer or explanation and offers for sale cosmetics and goods related to erectile dysfunction. This Panel accepts the Complainant’s uncontested evidence as evidence of bad faith use as this indicates that the Respondent is most likely using the Disputed Domain Name to obtain unfair commercial advantage over the Complainant’s trademark and/or to disrupt the Complainant’s business. Targeting of this nature is also a common example of bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), sections 3.1.4, and 3.2.1).

In the absence of a response, this Panel accepts the Complainant’s evidence and finds that the Respondent has registered and used the Complainant’s trademark MELVITA in the Disputed Domain Name, without the Complainant’s consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant’s rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 that the Disputed Domain Name, <melvitacosm.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: November 5, 2023