

ADMINISTRATIVE PANEL DECISION

Clarins v. zheng jie
Case No. D2024-0341

1. The Parties

The Complainant is Clarins, France, represented by Tmark Conseils, France.

The Respondent is zheng jie, China.

2. The Domain Name and Registrar

The disputed domain name <clarins-sale.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 25, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 2024, 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 (Identity Undisclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2024, 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 February 2, 2024.

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 February 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 1, 2024.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on March 13, 2024. 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 major player in the field of cosmetics and make-up products. It has been established in France for more than 60 years where it is well-known and also well-established throughout the world. Evidence of the history of the Complainant and its trading activity is set out in Annex 4 to the Complaint.

The Complainant owns, as exclusive proprietor, many trademarks for the mark CLARINS registered throughout the world including in European countries, United Kingdom, Canada, China, Thailand, United States of America, and Iran (Islamic Republic of). Copies of certificates of registration are exhibited in Annex 5 to the Complaint.

Examples of the Complainant's trademark registrations for CLARINS are:

France - No.1637194 registered June 14, 1991 covering cosmetics in class 3;

European Union - No.005394283 registered October 5, 2010 covering cosmetics in class 3;

The above registrations pre-date the date of registration of the disputed domain name, registered on January 4, 2024.

The name CLARINS constitutes the Complainant's registered company name. It trades internationally using the domain name <clarins.com> registered on March 16, 1997. It also owns the domain name <clarinsusa.com> registered on November 11, 1997 for access to its US website and <clarins.fr> registered on August 9, 1996 for access to its French website. Evidence of the Whois entries for these domain names is exhibited at Annex 6 to the Complaint.

The Respondent, zheng jie, has an address in China.

Evidence is given by the Complainant in Annex 7 to the Complaint of the Respondent's website which the Complainant confirms is unauthorized utilizing prominently the Complainant's trademark CLARINS offering infringing cosmetic products marked CLARINS. The Complainant states that the website is "a clear knock-off version of the Complainant's official website."

It can be seen that the Respondent uses the same visual as the Complainant's website. In the Complaint the Complainant sets out a comparison of its own website and that of the Respondent for a number of products. The Complainant refers to the fact that the infringing cosmetic products are offered for sale at a lower price than the Complainant's genuine products.

In the absence of a Response the Panel finds the evidence adduced by the Complainant to be true.

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 disputed domain name.

Notably, the Complainant contends that;

- i. The disputed domain name <clarins-sale.shop> consists of the Complainant's trademark CLARINS with the addition of the descriptive words "sale" and "shop".
- ii. The disputed domain name is not authorized by the Complainant for registration or use by the Respondent. The evidence shows that the Respondent is not using it with any rights or legitimate interests.
- iii. The evidence shows that the Respondent must have known of the prior rights and wide use of the mark CLARINS by the Complainant at the date of registration of the disputed domain name and that this together with the subsequent use being made of the domain name constitutes evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily 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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, namely the words "sale" and "shop" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods, and impersonation/passing off of the Complainant's goods, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

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.

In the present case, the Panel notes that the Respondent is using the disputed domain name for the purposes of its own trading website <clarins-sale.shop> which bears numerous similarities with the Complainant's own web-site as evidenced in Annex 7, as described by the Complainant as a "knock-off version".

The evidence shows that the Respondent was aware of the Complainant's prior trademark rights for CLARINS and its widespread use of the mark for its cosmetic products when it registered the disputed domain name. This supports a finding of registration and use in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods, impersonation/passing off of the Complainant's products constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <clarins-sale.shop> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: March 27, 2024