

## ADMINISTRATIVE PANEL DECISION

Clarins v. lin jie

Case No. D2024-0342

### 1. The Parties

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

Respondent is lin jie, China.

### 2. The Domain Name and Registrar

The disputed domain name <clarinsfr-outlet.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 Complainant on January 29, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 30, 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 Respondent of the Complaint, and the proceedings commenced on February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 27, 2024.

Due to an administrative oversight, it appears that the Center's Notification email was not copied to one of Respondent's email. In light of the above, on March 8, the Center re-sent the Complaint and granted the

Respondent a five-day period through March 13, 2024, in which to indicate whether it wishes to participate to this proceeding. On March 8, 2024, Respondent sent an email communication to the Center. Respondent did not submit a formal Response.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on March 14, 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**

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.

Complainant holds numerous trademarks for “Clarins” on a worldwide basis, inter alia:

- French trademark registration CLARINS n° 1637194, registered on January 7, 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;
- United Kingdom 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° TMA645123, filed on June 3, 2004, and registered on July 29, 2005, covering cosmetic products in class 3;
- United States of America trademark registration CLARINS n° 73746658, filed on August 17, 1988, and registered on January 2, 1990, covering cosmetics and make-up goods in class 3;
- United States of America trademark registration CLARINS n° 72361433, filed on June 2, 1970, and registered on May 30, 1972, covering cosmetics and make-up goods in class 3;
- Thailand trademark registration CLARINS n° Kor76352, registered on March 24, 1988, covering cosmetics and make-up goods in class 3;
- International Registration, registration CLARINS n° 208808, registered on April 10, 1958, designating amongst other countries, China, where Respondent is apparently domiciled, covering notably cosmetics and make-up goods in class 3.

The registrations are held by Complainant, are still valid and will hereinafter collectively be referred to as the “Trademark”.

Complainant has further owned the domain name <clarins.fr> since August 19, 1996, as well as <clarinsusa.com> since November 11, 1997.

The disputed domain name has been registered on January 17, 2024, and resolves to a website that has the same look and feel as Complainant’s official website, with Complainant’s Trademark and logo CLARINS and where products bearing Complainant’s Trademark are offered for sale at discount prices.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant first alleges that the disputed domain name is confusingly similar to its Trademark as it entirely incorporates its Trademark, with the addition of the descriptive elements “fr” (that refers to France) and the term “outlet” that refers to the characteristics of the products which would be discounted.

Complainant then affirms that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not affiliated to Complainant in any way. The disputed domain name further leads to a website offering infringing CLARINS’ cosmetic products under Complainant’s Trademark and which is a clear knock-off version of Complainant’s official website. Respondent uses the same visual as the one of the official website. Respondent sells infringing cosmetic products at a lower price than the authentic ones. By reproducing Complainant’s well-known Trademark and imitating the official website, the disputed domain name carries a risk of implied affiliation. Respondent clearly misleads the consumers and diverts them from the real and official Complainant’s website, in order to create a commercial gain for himself. Such use cannot and does not constitute bona fide commercial use, sufficient to legitimize any rights and interests Respondent might have in the disputed domain name.

Taking into account the very strong reputation and distinctiveness enjoyed by Complainant’s Trademark, Complainant finally considers that Respondent was obviously aware of its 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.

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions. On March 8, 2024, the Respondent sent an email communication to the Center unrelated to the proceeding, providing order and shipment procedural information.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The burden of proof of each element is borne by Complainant. Respondent’s default does not by itself mean that Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 4.3.

### **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 Complainant’s Trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

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

Although the addition of other terms, here, “fr” and “outlet”, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on 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 Respondent. As such, where a complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

The disputed domain name leads to a website that mimics Complainant’s official website by using Complainant’s Trademark and logo, website lay-out and pictures, and offering cosmetic products under Complainant’s Trademark. Therefore, the disputed domain name carries a risk of implied affiliation. Respondent clearly misleads the consumers and diverts them from the real and official Complainant’s website, in order to create a commercial gain for himself. Such use cannot constitute bona fide commercial use, sufficient to legitimize any rights and interests Respondent might have in the disputed domain name.

Panels have held that the use of a domain name for illegal activity, here impersonation/ passing off, 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.

Bad faith requires Respondent to be aware of Complainant’s Trademark. In the present case, 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 Complainant’s official website and reproduces Complainant’s official Trademark and logo, the Panel finds that Respondent must have been aware of Complainant’s Trademark when he registered the disputed domain name.

Respondent has sought to create a misleading impression of association with Complainant. The disputed domain name is ideally suited to misleading the public, especially as the disputed domain name resolves to a website that is a knock-off version of Complainant’s official website, and reproduces Complainant’s official logo. As a result, the consumer gets the impression that the website is an official outlet of Complainant, or a

corporation associated with it, and is thus being misled. Such a use of a domain name, in a blatant targeting of Complainant's trademark rights, obviously amounts to a use in bad faith.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <clarinsfr-outlet.shop> be transferred to Complainant.

*/Richard van Oerle/*

**Richard van Oerle**

Sole Panelist

Date: March 19, 2024