

ADMINISTRATIVE PANEL DECISION

Clarins v. shang zhi
Case No. D2024-0514

1. The Parties

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

The Respondent is shang zhi, China.

2. The Domain Name and Registrar

The disputed domain name <clarinsskinspa-sxm.com> is registered with Gname 127 Inc., (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2024. On February 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 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 9, 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 in English on February 19, 2024.

On February 9, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On February 19, 2024, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 13, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on March 21, 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, Clarins, is a French company and is one of the major actors in the field of cosmetics and make-up products. It has been operating in France for over 60 years, and is also well established worldwide, doing business in Europe, Australia, North and South America, and Asia.

The Complainant is the owner of various CLARINS trademarks worldwide, including the following:

- Singapore trademark registration no. T7358841Z for CLARINS, filed on September 13, 1973;
- United States of America trademark registration no. 1574179 for CLARINS, registered on January 2, 1990;
- China trademark registration no. G879234 for CLARINS SKIN SPA, registered on March 6, 2006;
- France trademark registration no. 4221295 for CLARINS SKIN SPA, registered on February 19, 2016.

The Complainant purports to own and operate various domain names, including the following:

- <clarins.com>, registered on March 16, 1997; and
- <clarins.com.sg>, registered on October 4, 1998; and
- <clarins.com.cn>, registered on May 20, 2006.

The disputed domain name was registered on December 4, 2023, and resolves to a website promoting inter alia gaming, electronic sports, and lotteries, and possibly also promoting online gambling.

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:

- 1) The disputed domain name is confusingly similar to the Complainant's trademark in which it has rights. The disputed domain name contains the entirety of the Complainant's CLARINS and/or CLARINS SKIN SPA with the addition of the suffix "sxm". The suffix "sxm" refers to the airport code for the island of Saint Martin, and the suffix is therefore a descriptive of a geological location. This is insufficient to avoid a finding of confusing similarity with the Complainant's trademark.

2) The Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence to suggest that the Respondent is commonly known by “clarins”. The Complainant has never licensed or authorized the Respondent to use its CLARINS and/or CLARINS SKIN SPA trademarks in any way, in a domain name or otherwise. The Respondent is not using the disputed domain name in connection with any bona fide offering of goods or services. In fact, the disputed domain name resolves to an online sports gambling webpage. Such use of the disputed domain name clearly cannot amount to a bona fide use within the meaning of paragraph 4(c)(i) the Policy. Further, the disputed domain name is likely to mislead Internet users that the disputed domain name is sponsored by the Complainant, which would be detrimental to the Complainant’s image, and dilution of its trademark.

3) The disputed domain name was registered and is being used in bad faith. The Complainant’s CLARINS and/or CLARINS SKIN SPA trademarks are very famous and have been extensively used well before the Respondent registered the disputed domain name. The Respondent was therefore obviously well aware of the Complainant and its CLARINS and/or CLARINS SKIN SPA trademarks when he or she registered the disputed domain name. Considering that Clarins is not a descriptive or dictionary word, and the fact that the disputed domain name resolves to an online gambling website, it is obvious that the Respondent was taking advantage of the confusing similarity between the Complainant’s CLARINS and/or CLARINS SKIN SPA trademarks and the disputed domain name to mislead Internet users into believing that the disputed domain name is sponsored by the Complainant. These are all indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

(i) the disputed domain name consists of Latin characters and of the English words “skin” and “spa”, which proves that the Respondent has knowledge of the English language;

(ii) the Complainant does not speak Chinese, and if the Complainant is required to translate the Complaint into Chinese, it would incur substantial translation costs which would also result in the delay of the current proceeding and result in prolonging the infringement of the Complainant’s rights.

The Respondent did not make any specific submissions with respect to the language of the proceeding despite being duly notified by the Center in both Chinese and English of the language of the proceeding and of the commencement of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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 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 entirety of the Complainant's CLARINS and CLARINS SKIN SPA marks are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the additional term here, "-sxm", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

The Complainant's registration of its trademarks predates the registration of the disputed domain name. The disputed domain name resolves to a webpage promoting inter alia gaming, electronic sports, and lotteries, and possibly also promoting online gambling. There is no evidence showing that the Respondent is using or has made any preparations to use the disputed domain names in connection with a bona fide offering of goods or services or for a legitimate noncommercial or fair use purpose.

The Panel also finds that the use of the Complainant's trademark, CLARINS SKIN SPA, in its entirety, together with a term possibly referring to an airport location, carries a risk that the disputed domain name would be perceived by Internet users to be affiliated with the legitimate holder of the trademark, i.e., the Complainant. It has been held by prior UDRP panels that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. The Respondent's choice of the well-known trademarks associated with

the Complainant shows a clear intent to mislead unsuspecting Internet users expecting to find the Complainant and instead are redirected to the Respondent's website promoting inter alia gaming, electronic sports, and lotteries, and possibly also promoting online gambling, reinforcing the notion that the Respondent's intent was and is commercial gain.

There is no evidence to suggest that the Respondent is commonly known by the Complainant's trademarks.

Panels have held that the use of a domain name for illegal activity here, promotion of possible online gambling (which is illegal in China where the Respondent is located), cannot confer rights or legitimate interests on the 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 registered the disputed domain name long after the Complainant registered the CLARINS and/or CLARINS SKIN SPA trademarks. Given the reputation of the Complainant's marks and their good will, it is highly unlikely that the Respondent did not know of the Complainant and its trademarks prior to the registration of the disputed domain name. The fact that the disputed domain name resolves to a webpage which promotes what appears to be online gambling as well as gaming, electronic sports, and lotteries for the Respondent's commercial gain is indicative of the Respondent's bad faith.

Panels have held that the use of a domain name for illegal activity here, promotion of possible online gambling (which is illegal in China where the Respondent is located), is also an indication of bad faith registration and use of the disputed domain name. [WIPO Overview 3.0](#), section 3.4.

The Panel also draws an adverse inference from the Respondent's failure to file any Response, not least contributed to by the Respondent not providing his full postal address when registering the disputed domain name.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitute 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 <clarinsskinspa-sxm.com> be transferred to the Complainant.

/Jonathan Agmon/
Jonathan Agmon
Sole Panelist
Date: April 4, 2024