

## ADMINISTRATIVE PANEL DECISION

L'Oréal v. 瞿国风 (Qu Guo Feng)  
Case No. D2024-0936

### 1. The Parties

The Complainant is L'Oréal, France, represented by Dreyfus & associés, France.

The Respondent is 瞿国风 (Qu Guo Feng), China.

### 2. The Domain Name and Registrar

The disputed domain name <maybelline.company> is registered with DNSPod, Inc. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 4, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On March 5, 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 the same day, the Complainant confirmed its 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 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 March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 5, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on April 15, 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, L'Oréal, is a global French industrial group specializing in the field of cosmetics and beauty. The Complainant has a portfolio of international brands covering all the lines of cosmetics such as hair care, colouring, skin care, make-up, and perfume. The Complainant has a presence in 150 countries and employs 86,000 employees.

The Complainant established a presence in China in 1997. Headquartered in Shanghai, and having offices in 5 other cities, the Complainant has 25 brands and employs 10,000 people in China alone.

Amongst others, the Complainant's Maybelline New York brand is available in over 120 countries including China. It is one of the most sold beauty products in the world.

The Complainant owns various MAYBELLINE trade marks worldwide, including the following:-

- International trade mark no. 1681807 for MAYBELLINE, registered on 31 May 2022;
- United States of America trade mark no. 1065615 for MAYBELLINE, registered on 17 May 1977; and
- European Union trade mark no. 007598031 for MAYBELLINE, registered on 22 October 2009;

The Complainant operates the following domain names:-

- <maybelline.com>, registered on October 20, 1998; and
- <maybelline.cn>, registered on March 17, 2003.

The disputed domain name <maybelline.company> was registered on December 26, 2023, and resolved to a website resembling the Complainant's own website, where it purportedly offers for sale, cosmetic products bearing both the Complainant's own MAYBELLINE trade mark without any disclaimer disclosing the (lack of) relationship between the Parties, and other products sold under other brands which compete directly with the Complainant's own products.

#### **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 virtually identical to the MAYBELLINE trade mark in which it has rights. The disputed domain name contains the entirety of the MAYBELLINE trade mark with no alterations or additions. The registration of the disputed domain name has created a likelihood of confusion with the Complainant's MAYBELLINE trade mark, and could mislead Internet users into thinking that the disputed domain name is associated with the Complainant.

2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent is not affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to use its MAYBELLINE trade mark in any way, including the registration of the disputed domain name. The Respondent was also not using, or had made demonstrable preparations to use the disputed domain name with a bona fide offering of goods and services. The disputed domain name resolves to a webpage that reproduces the visuals of the Complainant's official website, where likely fake cosmetic products bearing the Complainant's MAYBELLINE trade mark are offered for sale. The Respondent is falsely suggesting that it is the owner of the MAYBELLINE trade mark, and that his webpage is an official website of the Complainant. Such use of the disputed domain name with the intent for commercial gain to mislead and divert consumers from the Complainant's official webpage cannot be said to be a legitimate, noncommercial use of the Complainant's trademark. Further, the Respondent did not reply to the Complainant's cease-and-desist letter and reminders.

3) The disputed domain name was registered and is being used in bad faith. The registration of the Complainant's MAYBELLINE trade mark significantly pre-dates the registration of the disputed domain name. The Complainant is also well-known throughout the world, and it is implausible that the Respondent was unaware of the Complainant at the time of registering the disputed domain name. The fact that the disputed domain name consists of the Complainant's MAYBELLINE trade mark in its entirety with no alterations is evidence that the Respondent was aware of the Complainant and its trade mark. The Respondent's website also displays a copyright sign "©2023Maybelline" on it, which is a false claim to the ownership of the MAYBELLINE trade mark. Further, there are third party goods being sold on the Respondent's website alongside the Complainant's goods. This would lead to consumers believing that there is a link between those products and the Complainant, leading to reputational damage to the Complainant. The only plausible reason for registering the disputed domain name was to deliberately cause confusion between Internet users as to the source of the webpage, in order to take advantage of the Complainant's goodwill and reputation, which is evidence 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:

- 1) the Complainant is located in France and has no knowledge of Chinese. If the Complainant were required to retain specialized translation services at a cost that is likely to be higher than the overall cost for the present proceedings. This would impose an undue burden on the Complainant;
- 2) the disputed domain name consists of Latin characters, which strongly suggests that the Respondent has knowledge of languages other than Chinese; and
- 3) English is the primary language for international relations, and it is one of the working languages of the Center.

The Respondent did not make any 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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent was not authorized by the Complainant to use the latter's MAYBELLINE trade mark or to register a domain name incorporating the trademark. There is no evidence that the Respondent uses the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain. The disputed domain name resolves to a webpage displaying the Complainant's mark where various goods, including goods not sold by the Complainant, are offered for sale. This creates an association of the goods with the Complainant's MAYBELLINE trade mark, and could harm the reputation and goodwill of the

Complainant's MAYBELLINE trade mark. This is especially so since the chosen generic Top-Level Domain is ".company", which implies that the disputed domain name is a legitimate one, operated by the Complainant. Further, it would be a stretch to say that the Respondent is a legitimate seller of all the various brands of goods advertised on the Respondent's website. The Panel also notes that the products sold on the Respondent's website bearing the MAYBELLINE trade mark are sold at a steep discount of around 60 per cent without any disclaimer disclosing the (lack of) relationship between the Parties. This supports a finding that the goods sold on the Respondent's website are likely counterfeit goods. Such activity can never confer rights or legitimate interests in the disputed domain name. Further, the fact that the Respondent did not respond to the Complainant's cease-and-desist letter is indicative that he does not have any rights or legitimate interests in the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, 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 registered the disputed domain name long after the Complainant registered its MAYBELLINE trade mark. Given the reputation of the Complainant's mark and its 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 is identical to the Complainant's trade mark and resolves to a webpage where presumably counterfeit goods are offered for sale is strongly indicative of the Respondent's bad faith.

The Panel also draws an adverse inference from the Respondent's failure to file any Response, to respond to the Complainant's cease-and-desist letter dated January 10, 2024, or to rebut the Complainant's assertions.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, 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 <maybelline.company> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: April 26, 2024