

ADMINISTRATIVE PANEL DECISION

CLARINS v. MSims Charles

Case No. D2024-1232

1. The Parties

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

The Respondent is MSims Charles, United States of America.

2. The Domain Name and Registrar

The disputed domain name <perfectclarins.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 21, 2024. On March 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 25, 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 March 26, 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 March 27, 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 April 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 23, 2024.

The Center appointed Jane Lambert as the sole panelist in this matter on April 25, 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 leading cosmetics, skincare and perfume supplier. It has also developed a substantial business in spas and well-being. It was founded in Paris in 1954 by Jacques Courtin-Clarins and remains a private limited company (Société par actions simplifiée) controlled by the Courtin-Clarins family. It employs 8,500 individuals in over 150 countries. It distributes its products through selected department stores and other upmarket retailers.

It has registered the word mark CLARINS for various classes of goods and services in many countries and regions including the following:

Country or Region	Number	Classes	Registration
France	1637194	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45	January 7, 1991
European Union	005394283	3, 5, 10, 16, 21, 44	October 5, 2010
United Kingdom	UK00905394283	3, 5, 10, 16, 21, 44	October 5, 2010

The Complainant has registered and uses the domain name <clarins.com> to promote its goods around the world as well as country-code domain names like <clarins.co.uk> to promote them in individual countries such as the United Kingdom.

All that is known about the Respondent is the name and contact details that the Registrar has disclosed to the Center. The postal address appears to be false because the Center's courier was unable to deliver a Written Notice. The Respondent has used the disputed domain name for a website through which he distributes cosmetic products some or all of which the Complainant suspects to be counterfeit. However, the Complainant does not appear to have attempted any trap orders from that site. The Complainant mentions that site in Section VI.B of the Complaint and supplies details of it in Annex 7.

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.

The Complainant submits that the disputed domain name is confusingly similar to the CLARINS word mark, as it reproduces the mark in its entirety and combines it with the adjective "perfect". The Complainant has cited numerous decisions that have held that incorporation of a registered trade mark in a domain name is sufficient to establish confusing similarity for the purpose of the Policy. It refers in particular to *Montblanc-Simplo G.m.b.H v. Jing Yang*, WIPO Case No. [D2013-0856](#), where the Panel held that the generic term "perfect" merely emphasized the characteristics of the Montblanc products and that consumers were likely to associate this term exclusively with the complainant in that case and its products owing to the international goodwill that the company had developed in the MONTBLANC trade marks over the years. The Complainant urges the same reasoning to be applied here.

As to whether the Respondent has any rights or legitimate interests in respect of the disputed domain name, the Complainant points out that previous panels have held that it is sufficient for a complainant to make a prima facie case that a respondent lacks rights or legitimate interests in a disputed domain name in order to shift the burden of production to the respondent. By way of example, the Complainant cites *Crédit Industriel et Commercial S.A. v. Zabor Mok*, WIPO Case No. [D2015-1432](#). If a respondent fails to demonstrate that it has some rights or legitimate interests in a domain name the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant emphasizes that the Respondent is not affiliated in any way to the Complainant and has never been authorized to use or register the word CLARINS as a domain name or for any other purpose. It preempts any suggestion or supposition that the Respondent's site amounts to non-commercial or a fair use of the disputed domain name. Referring to *Philip Morris Products S.A. v. Kirill Kirill*, WIPO Case No. [D2022-2156](#), the Complainant contends that the Respondent's site would be objectionable even if the goods that it supplies include genuine products from the Complainant because it also offers goods from competing cosmetic and skincare suppliers. Unlike an authorized retailer the Respondent has no relationship with the Complainant and the representation of such a relationship which the Respondent makes to the public is untrue.

Although the Complainant makes such an allegation in Section VI.B rather than Section VI.C, it has adduced evidence of registration and use of the disputed domain name in bad faith. The Complainant states:

"It is clear that the Respondent's intention is to divert consumers for commercial gain to such website, by taking unfair advantage of the goodwill and reputation of the Complainant's trademarks CLARINS."

It adds in the next paragraph:

"The Respondent clearly misleads the consumers and diverts them from the real and official Complainant's website, in order to create a commercial gain for itself"

and states that such use relies on exploiting user confusion.

Although the Complainant appears to be focused on anticipating and forestalling any case that might be made under paragraph 4(c)(i) or (iii) of the Policy it has in fact satisfied the requirement of paragraph 4(a)(iii).

Other arguments upon which the Complainant relies for its contention that the disputed domain name was registered and is used in bad faith include the contention that the Complainant's word mark is well-known throughout the world, the Respondent must have been aware of it and that the recent registration of a well-established trade mark as a component of a domain name is ipso facto an act of bad faith.

The Complainant refers to, *Novartis AG v. Bob de Vries*, WIPO Case No. [D2016-1154](#), in which the panel said:

"It is clear that the Respondent is, in the circumstances, using the disputed domain name in bad faith, relying on consumer deception to gain a financial advantage from the misconception the disputed domain name generates as to the connection between the goods offered and the Complainant, which include products of the Complainant's competitors."

In the penultimate paragraph of VI.C the Complainant contends:

"Finally, as mentioned before, there is no way of knowing whether the goods sold by the Respondent under the trademark CLARINS are authentic, which is doubtful given the discounts applied. The application of several discounts to a large quantity of CLARINS goods is likely to make consumers doubt about the reliability of the products, and they may turn away from the trademark and goods CLARINS. Therefore, it is likely to tarnish the image of quality associated with the Complainant's trademark CLARINS."

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainant to prove that each of the following elements is present:

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

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 the trade mark CLARINS 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 and is combined with the adjective "perfect". Accordingly, the disputed domain name is confusingly similar 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.

Panels have held that the use of a domain name for illegal activity such as the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking,

impersonation/passing off, or other types of fraud) 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. Paragraph 4(b)(iv) of the Policy states that one of those circumstances is as follows:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel has already found that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. It follows that the use of the disputed domain name creates a likelihood of confusion with the Complainant’s mark as to the source of the products on the Respondent’s site. The Respondent’s use of the disputed domain name is intended to attract Internet users to the Respondent’s site in the hope of selling products through that site whereby the Respondent would obtain commercial gain. Accordingly, the Panel holds that the requirements of paragraph 4(b)(iv) of the Policy have been satisfied.

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 <perfectclarins.com> be transferred to the Complainant.

/Jane Lambert/

Jane Lambert

Sole Panelist

Date: May 2, 2024