

## **ADMINISTRATIVE PANEL DECISION**

### **Laboratoires M&L v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2024-1271**

#### **1. The Parties**

The Complainant is Laboratoires M&L, France, represented by IP Twins, France.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

#### **2. The Domain Name and Registrar**

The disputed domain name <lioccitane.com> is registered with GoDaddy.com, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2024. On March 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 26, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 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 April 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 April 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2024.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on May 8, 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 Laboratoires M&L, which is part of the L'Occitane Group, a leading manufacturer and retailer of premium cosmetic products with a focus on wellness and natural beauty. The L'Occitane Group was founded in 1976 and currently is present in 90 countries, with over 3,000 retail locations and around 1,300 stores operated directly by it. Evidence of this renown is presented as Annex 3 of the Complaint.

The Complainant holds several word marks for the trademark L'OCCITANE, as states Annex 4. Among these registrations, the following ones are worth mentioning (Annexes 5 to 7 to the Complaint):

- International Registration No. 1006051, of October 8, 2008, covering products and services from international classes 09, 14, 18, 24, 25, 28, 30, 35, 43, and 44;
- International Registration No. 579875, registered on November 5, 1991, referring to goods from international classes 03, 04, 05, 16, and 21;
- International Registration No. 1330027 registered on June 28, 2016, and designating goods and services from international classes 04, 16, 18, 25, 43 and 44.

The Complainant is the owner of numerous domain names, including <loccitane.com>, registered on April 7, 1997, pointing to the Complainant's website.

The disputed domain name was registered on March 4, 2024. At the time of this decision, the disputed domain name resolves to a parking page comprising pay-per-click ("PPC") links.

#### **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 states that the disputed domain name is confusingly similar to the trademark - in fact, the disputed domain name includes the trademark in its entirety, with the insertion of the letter "i" between the initial "l" and the term "occitane", which has no effect whatsoever in distancing the disputed domain name from the registered trademark.

The Respondent has no rights nor legitimate interests in the disputed domain name, whereas the Respondent has not acquired any trademark rights with respect to the disputed domain name. As stated by the documents presented, the registration and use of the trademark L'OCCITANE predates the registration of the disputed domain name in several decades.

Moreover, the Respondent is not commonly known by the disputed domain name. The Respondent has also not secured a license nor any other authorization from the Complainant to use the trademark. Lastly, the disputed domain name resolves to a parking page comprising PPC links, which leads to conclude that the disputed domain name has been used with commercial purposes.

In sum, the Complainant alleges that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect to 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 disputed domain name is confusingly similar to the L'OCCITANE trademark, as the latter is entirely incorporated in the disputed domain name, with the mere addition of a letter "i".

The Complainant has presented consistent evidence of ownership of the trademark L'OCCITANE in jurisdictions throughout the world, by presenting international registrations for it, as well as comprehensive evidence of the use of the trademark.

The use of the trademark with the insertion of the letter "i" in the disputed domain name does not prevent a finding of confusing similarity with the trademark.

The trademark is clearly recognizable in the disputed domain name and as set out in [WIPO Overview 3.0](#), section 1.9, a misspelling would not prevent a finding that the disputed domain name is confusingly similar to the relevant mark for purposes of the first element.

Lastly, the Panel notes that, in accordance with section 1.11.1 of the [WIPO Overview 3.0](#), the generic Top-Level Domain ("gTLD"), in this case ".com", is typically disregarded under the first element.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

### 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.

Given the clear evidence that the trademark L'OCCITANE is registered in the name of the Complainant and is widely known as identifying the Complainant's activities, that the Complainant has not licensed this to the Respondent, and evidence that the Respondent is using the disputed domain name in connection with a

PPC scheme, the Panel finds that the Complainant has established prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has established prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted such prima facie case.

The Panel, thus, finds for the Complainant under the second element of the Policy.

### **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 finds that the Respondent has probably registered the disputed domain name with the purpose of taking unfair advantage of the Complainant's mark.

The misspelling of the disputed domain name points towards the Respondent's likely intent to give the impression that the disputed domain name is associated with the Complainant. In the absence of any reasonable explanation for the selection of the disputed domain name by the Respondent, and in the circumstances of this case, the Panel finds that, it is more likely than not, that the disputed domain name has been registered to take unfair advantage due to its value as a trademark owned by the Complainant.

The fact that the disputed domain name resolves to a website displaying PPC links to third party sites, supports a finding of bad faith use in these circumstances.

Lastly, the Panel notes the Respondent's involvement in UDRP as a respondent. In these circumstances, the Respondent's tendency to engage in such a pattern of bad faith conduct reinforces the Panel's finding.

In the totality of the circumstances, the Panel finds the Respondent has registered and is using the disputed domain name in bad faith.

### **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 <lioccitane.com> be transferred to the Complainant.

*/Alvaro Loureiro Oliveira/*  
**Alvaro Loureiro Oliveira**  
Sole Panelist  
Date: May 22, 2024