

ADMINISTRATIVE PANEL DECISION

La Roche-Posay Laboratoire Pharmaceutique v. 魏建东 (JianDong Wei)
Case No. D2024-1352

1. The Parties

The Complainant is La Roche-Posay Laboratoire Pharmaceutique, France, represented by Dreyfus & associés, France.

The Respondent is 魏建东 (JianDong Wei), China.

2. The Domain Name and Registrar

The Disputed Domain Name <larocheposayus.com> (the “Disputed Domain Name”) is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 3, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 April 4, 2024.

On April 3, 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 April 4, 2024, 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 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 Chinese and English of the Complaint, and the proceedings commenced on April 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 7, 2024.

The Center appointed Rosita Li as the sole panelist in this matter on May 13, 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, La Roche-Posay Laboratoire Pharmaceutique, is a French company manufacturing dermatological products formulated with thermal spring water. The brand LA ROCHE-POSAY was founded in 1975, the Complainant has been engaging in the dermatology industry, working in close partnership with many dermatologists. The Complainant is a subsidiary of the industrial group L'Oréal, a French industrial group specialized in the field of cosmetics and beauty and is the first cosmetics group worldwide.

The Complainant owns LA ROCHE POSAY trademark registrations for dermatological and cosmetic products around the world, including in China, under the following International Registrations:

- 1) International Registration No. 787605 for LA ROCHE-POSAY, registered on July 12, 2002, covering classes 3 and 5.
- 2) International Registration No. 1533143 for LA ROCHE-POSAY, registered on April 24, 2020, covering classes 3 and 5.
- 3) International Registration No. 1281149 for LA ROCHE-POSAY LABORATOIRE DERMATOLOGIQUE & Design, registered on October 14, 2015, covering class 3.

(Together with other trademarks of the Complainant, the "LA ROCHE POSAY trademarks".)

The Complainant uses the domain name <laroche-posay.com> for its business, registered on October 21, 1996.

The Disputed Domain Name was registered on February 29, 2024. The Disputed Domain Name directs to a website of an online store, bearing the Complainant's trademarks prominently, which purports to sell products under the LA ROCHE POSAY brand at largely discounted prices.

Before the commencement of the proceeding, on March 7, 2024, the Complainant sent a blocking request to the Registrar and a deactivation request of the website of the Disputed Domain Name to the hosting company, Netminders Server Hosting. However, the Registrar and the hosting company did not respond to the Complainant despite several reminders from the Complainant.

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. A summary of the Complainant's submission is as follows.

- (i) The Disputed Domain Name is identical or confusingly similar to the LA ROCHE POSAY trademarks. The Complainant contends that:

- The Disputed Domain Name incorporates the LA ROCHE POSAY trademark in its entirety with the mere addition of the term “us”. The term “us” refers to the country code of the United States of America, which is a generic and descriptive term. The addition of such term is insufficient to avoid any likelihood of confusion; and
- Internet users are very likely to be confused as to whether an association exists between the Disputed Domain Name and the Complainant.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:

- The Respondent is not affiliated with the Complainant;
- The Complainant has never authorized the Respondent to use the LA ROCHE POSAY trademarks;
- The Respondent is not commonly known by the Disputed Domain Name;
- The Respondent is not identified in the Whois records;
- The Disputed Domain Name directs to a fraudulent website of an online store, bearing the Complainant’s trademarks, which purports to sell products under the LA ROCHE POSAY brand at low prices. The Disputed Domain Name also falsely represents itself as L’Oreal. Internet users are very likely to be confused that the Disputed Domain Name is an official website of the Complainant. The Respondent’s use of the Disputed Domain Name does not qualify as a bona fide offering of goods and services; and
- Given the Complainant’s goodwill and renown reputation worldwide, the Respondent creates misleading diversion and takes unfair advance of the Complainant’s rights by using the LA ROCHE POSAY trademark to form the Disputed Domain Name. The Respondent is not making legitimate noncommercial or fair use of the Disputed Domain Name.

(iii) The Respondent registered and is using the Disputed Domain Name in bad faith. The Complainant contends that:

- The Complainant has acquired worldwide reputation of the LA ROCHE POSAY trademarks;
- The Respondent should have known about the LA ROCHE POSAY trademarks when it chose the Disputed Domain Name;
- The Respondent used privacy service to block the disclosure of its identity;
- The Respondent is using the Disputed Domain Name which reproduces a famous trademark. The Disputed Domain Name directs to a fraudulent website with the Complainant’s logo and visuals without authorization. The Respondent has the intent to impersonate the Complainant and trick its consumers into believing this domain name is official, probably to retrieve confidential information, which clearly constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (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 of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

6.1 Preliminary Issue: 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 the Complainant has no knowledge of Chinese. If the language of the proceeding were Chinese, the Complainant would have to retain specialized translation service which would add considerable costs to the Complainant. The Complainant further submitted the fact that the Disputed Domain Name includes only Latin characters suggests the Respondent has knowledge of languages other than Chinese.

The Respondent did not make any specific submissions with respect to the language 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).

The Panel considered the above circumstances and the fact that:

- (i) According to the screenshot of the webpage under the Disputed Domain Name provided in the Complaint, English is the main language for the content displayed on the webpage under the Disputed Domain Name; and
- (ii) Even though the Center has used English and Chinese in the relevant correspondences with the Respondent, the Respondent has not filed any response and did not indicate the preference on the language of the proceeding.

In view of the above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term here, "us", 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 Panel accepts the Complainant’s submissions that the Respondent does not appear to be commonly known by the Disputed Domain Name. The Panel notes that the Respondent is not affiliated with the Complainant nor has the Complainant licensed or authorized the Respondent to use the Complainant’s LA ROCHE POSAY trademarks, or to register any domain name incorporating the LA ROCHE POSAY trademarks.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel notes that the Complainant has included a website screenshot in the Complaint, which shows the Disputed Domain Name directs to a website of an online store, bearing the Complainant’s trademarks prominently, which purports to sell products bearing the LA ROCHE POSAY brand at disproportionately low prices. There is not any disclaimer disclosing the (lack of) relationship between the Parties. The Disputed Domain Name appears to be a fraudulent copy of the Complainant’s website. The Panel is prepared to find that the Respondent did not use the Disputed Domain Name in connection with a bona fide offering of goods or services. The Panel finds it apparent that the Respondent had the intention to divert consumers seeking to find the Complainant to the Disputed Domain Name by impersonating the Complainant. It is clear that the use of the Disputed Domain Name, which is also inherently misleading, by the Respondent was an attempt to capitalize on the reputation and goodwill of the Complainant’s LA ROCHE POSAY trademarks and mislead Internet users. As such, the Panel does not find that the use of the website associated with the Disputed Domain Name is for a legitimate noncommercial or fair use.

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.

The Panel finds that at the time of registration of the Disputed Domain Name in 2024, the Complainant’s LA ROCHE POSAY trademarks were already registered in various jurisdictions, including in China, where the Respondent is located. The Panel agrees that the Complainant’s LA ROCHE POSAY trademarks are well known and reputable amongst the general public. The Panel agrees that the Complainant’s well-known

reputation has been considered and acknowledged by earlier UDRP decisions as provided by the Complainant to the Panel in its submissions.

Considering the reputation of the Complainant and the Complainant's LA ROCHE POSAY trademarks, it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the LA ROCHE POSAY trademarks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's LA ROCHE POSAY trademarks. [WIPO Overview 3.0](#), section 3.2.2. Accordingly, the Panel finds that the Respondent's registration of the Disputed Domain Name, which is confusingly similar to the Complainant's LA ROCHE POSAY trademark was in bad faith.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Considering the appearance and use of the Disputed Domain Name website to sell goods purporting to be under the LA ROCHE POSAY brand, the Panel is prepared to find that the Respondent has attempted to pass off as an official website of the Complainant and/or pass off as being affiliated with the Complainant, to benefit from the reputation and goodwill of the Complainant's LA ROCHE POSAY brand and trademarks. The Panel considers that the Respondent registered and used the Disputed Domain Name primarily for the purpose of attempting to attract, for commercial gain, Internet users to the Disputed Domain Name website by creating confusion with the Complainant's LA ROCHE POSAY trademarks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name website or of the products on the Disputed Domain Name website. [WIPO Overview 3.0](#), section 3.1. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

In light of the above, 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 <larocheposayus.com> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: May 27, 2024