

## **ADMINISTRATIVE PANEL DECISION**

CLARINS v. K KKK

Case No. D2024-2306

### **1. The Parties**

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

The Respondent is K KKK, China.

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

The disputed domain name <clarins-take.shop> (the “Disputed Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2024. On June 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 6, 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 June 7, 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 June 10, 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 June 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 3, 2024.

The Center appointed Mariia Koval as the sole panelist in this matter on July 9, 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 family-run French multinational cosmetics company, which was founded in 1954. In addition to manufacturing and selling cosmetics, skincare and perfume products, the Complainant is also a major player in the spa and well-being sector. The Complainant operates in over 150 countries and is available at high-end department stores and selected retailers, and is a major luxury skincare brand in Europe. Although more than 95% of the Complainant's products are exported worldwide, they are formulated and designed in laboratories in France.

The Complainant is the owner of CLARINS trademark registrations (the "CLARINS Trademark") in various jurisdictions worldwide, among which are:

- United States of America Trademark Registration No. 1574179, registered on January 2, 1990, in respect of goods in class 3;
- French Trademark Registration No. 1637194, registered on June 14, 1991, in respect of goods and services in classes 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;
- European Union Trademark Registration No. 005394283, registered on October 5, 2010, in respect of goods and services in classes 3, 5, 10, 16, 21, 44.

The Complainant operates numerous domain names identical to, or comprising, the CLARINS Trademark, for instance, <clarins.fr> and <clarinsusa.com> which have been registered since 1996 and 1997 respectively. The Complainant also operates pages on various social media platforms, in particular Facebook, Instagram, LinkedIn and YouTube.

The Disputed Domain Name was registered on May 13, 2024. As of the date of this Decision, when accessing via a desktop, the Disputed Domain Name resolves to an inactive website with the following notification: "The website is under maintenance." However, the website under the Disputed Domain Name is accessible via mobile phone and resolves to a website where allegedly counterfeit goods, falsely identified and labeled under the CLARINS Trademark are offered for sale.

#### **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 the Disputed Domain Name is confusingly similar to the Complainant's CLARINS Trademark since the Disputed Domain Name reproduces the Complainant's CLARINS Trademark in its entirety with the addition of the generic word "take", which does not prevent confusion with the Complainant's well-known CLARINS Trademark.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Respondent, is not affiliated in any manner with the Complainant, and has never been authorized to use or register in any way the name "Clarins", including as a domain name;
- the Respondent is not making a fair use of the Disputed Domain Name, since it is being used in relation with a website which is unauthorized, offering infringing cosmetic products under the Complainant's CLARINS Trademark at a lower price and which is a clear knock-off version of the Complainant's official website;
- by reproducing the Complainant's well-known CLARINS Trademark and imitating the Complainant's official website, the Disputed Domain Name carries a risk of implied affiliation with the Complainant;
- 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 himself. Such use, which relies on exploiting user confusion, cannot and does not constitute bona fide commercial use;
- the Respondent provided false contact information regarding its identity when registering the Disputed Domain Name.

The Complainant further contends that the Respondent registered and is using the Disputed Domain Name in bad faith in view of the following. The Complainant was already extensively using its CLARINS Trademark worldwide well before the date of the registration of the Disputed Domain Name. The Complainant's CLARINS Trademark has a well-known character worldwide and it is consequently obvious that the Respondent has not got any legitimate reason to register the Disputed Domain Name, except only for the aim to act in bad faith by taking advantage of the voluntary confusion created by its fraudulent registration.

The Respondent obviously knew the prior rights and wide use of the CLARINS Trademark by the Complainant. It is also worth noting that the Respondent has taken steps to cover his identity, which raises suspicions on his real intentions.

The Respondent uses the Disputed Domain Name in bad faith, primarily for the purpose of creating a likelihood of confusion with the Complainant's CLARINS Trademark as to the source, sponsorship and affiliation. Furthermore, the Complainant Claims that the Respondent is exploiting the Complainant's CLARINS Trademark, in order to harvest usernames and passwords of consumers and gain "click through" commissions from the diversion of Internet users, which is a common example of registration and use in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was 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 CLARINS Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's CLARINS Trademark is completely reproduced within the Disputed Domain Name with the addition of a hyphen, the word "take" and the generic Top-Level Domain (gTLD) ".shop". According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The addition of the word "take" to the CLARINS Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Furthermore, the use of the hyphen in the Disputed Domain Name is irrelevant in a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's CLARINS Trademark pursuant to paragraph 4(a)(i) of the Policy.

## **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 making a legitimate noncommercial or fair use of the Disputed Domain Name or that before any notice of the dispute the Respondent has made use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. On the contrary, the Disputed Domain Name is used to mislead Internet users, by offering purported counterfeit products for sale under the CLARINS Trademark, for the purpose of making a profit. Moreover, the website under the Disputed Domain Name contains the Complainant's logo and some original product images.

According to the [WIPO Overview 3.0](#), section 2.8.1, UDRP panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "Oki Data test", the following cumulative requirements will be applied to the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

As is seen from the circumstances of this case, the website under the Disputed Domain Name does not disclose the relationship between the Complainant and the Respondent. On the contrary, according to the section "About us" on the website under the Disputed Domain Name it creates a false impression that the website is one of the Complainant's official websites or related to the Complainant. Thus, the Respondent does not satisfy the conditions of the Oki Data test.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The fact that the Respondent has incorporated the Complainant's CLARINS Trademark in its entirety in the Disputed Domain Name, is further evidence, that the Respondent was very well aware of the Complainant's CLARINS Trademark and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant's CLARINS Trademark.

The Panel also finds that the Respondent is not commonly known by the Disputed Domain Name.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the second element of the paragraph 4(a) of the Policy has been met by the Complainant.

### **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 and is using the Disputed Domain Name in bad faith in view of the following. The Complainant obtained the registration of the CLARINS Trademark more than 30 years earlier than the Respondent registered the Disputed Domain Name in 2024. Taking into account all circumstances of this case, the Panel finds that the Respondent was very well aware of the Complainant's business and its CLARINS Trademark when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant's CLARINS Trademark. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's CLARINS Trademark, so as to create a false association or affiliation with the Complainant.

Moreover, the Respondent's knowledge of the Complainant's CLARINS Trademark is also supported by the use of the Disputed Domain Name which resolves to the website (accessible via mobile phone) offering purported counterfeit cosmetic products under the CLARINS Trademark at a lower price than the authentic

ones and containing the Complainant's logo and original product images. In view of the fact that the Disputed Domain Name resolves to a website which displays the Complainant's CLARINS Trademark, giving a strong impression that this website is related to or authorized by the Complainant, Internet users would most likely be misled to consider that the Disputed Domain Name refers to one of the Complainant's or its distributors' official websites.

Furthermore, the Disputed Domain Name, reproducing the Complainant's Trademark in its entirety, is evidently deceptive for consumers. The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's CLARINS Trademark, for the purpose of attracting Internet users to its competing website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and of the products sold on it.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's well-known CLARINS Trademark, to purportedly sell the Complainant's products at a discounted price, intended to disrupt the Complainant's business and confuse Internet users seeking or expecting the Complainant's website. In view of the absence of any evidence to the contrary and the fact that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Names in bad faith.

In light of the above, the Panel finds the third element of the Policy has been established.

## **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 <clarins-take.shop> be transferred to the Complainant.

*/Mariia Koval/*

**Mariia Koval**

Sole Panelist

Date: July 23, 2024