

## **ADMINISTRATIVE PANEL DECISION**

Clarins v. SY L

Case No. D2024-2463

### **1. The Parties**

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

The Respondent is SY L, China.

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

The disputed domain name <clarinses-es.shop> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2024. On June 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 18, 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 19, 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 20, 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 17, 2024.

The Center appointed Zineb Naciri Bennani as the sole panelist in this matter on July 19, 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 French company founded in 1954 and operating in the field of cosmetics and make-up products that operates in more than 150 countries and is the owner of trademark registrations for CLARINS, including the following:

- French trademark registration no. 1637194, filed on January 7, 1991, covering notably cosmetics and beauty care services;
- European Union Trade Mark no. 005394283, registered on October 5, 2010 for cosmetics and beauty care services; and,
- United Kingdom trademark no. UK00905394283, registered on October 5, 2010 for cosmetics and beauty care services.

The Complainant owns the following domain names:

- <clarins.fr>, registered since August 19, 1996; and,
- <clarinsusa.com>, registered since November 11, 1997.

The Complainant provided evidence of the above.

According to the Whois records, the disputed domain name was registered on June 15, 2024.

The disputed domain name redirects towards a page displaying the Complainant trademark and the same visuals that exist on the Complainant official website.

Currently, the website appears as under maintenance.

#### **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 argues that it owns numerous trademarks registrations worldwide and that it is well-known and well-established worldwide.

The Complainant also argues that the disputed domain name is confusingly similar to its trademark, company, and domain names.

Notably, the Complainant contends that the disputed domain name reproduces in first position the Complainant's trademark CLARINS with the addition of the element "es" and "-es" which will be perceived as the geographic extension ".es" which refers to Spain.

Therefore, the Complainant contends that the disputed domain name is virtually identical or at least confusingly similar to Complainant's trademark CLARINS.

The Complainant asserts that the Respondent has no right or legitimate interests in respect of the disputed domain name and that the Respondent is not making a fair use of the disputed domain name since it is used in relation with a website which is unauthorized, offering infringing CLARINS' cosmetic products under Complainant's trademark.

The Complainant submits that the website under the disputed domain name is a clear knock-off version of the Complainant's official website and carries a risk of implied affiliation.

According to the Complainant, the disputed domain name should be considered as having been registered and is being used in bad faith by the Respondent due to the numerous similarities between the websites and the steps taken by the Respondent to cover his identity.

## **B. Respondent**

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

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn.

## **6. Discussion and Findings**

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the 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.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing 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 owns numerous trademark registrations for the CLARINS mark worldwide.

Therefore, 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 with the addition of the element "es-es".

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 nature of such additional term(s) may however bear on assessment of the second and third elements."

Although the addition of the term “es-es” 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. See also, *Clarins v. Minjuan543 Zhou*, WIPO Case No. [D2022-4162](#) (finding the domain name <clarinsit.shop> confusingly similar to the Complainant’s mark).

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.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademark.

The composition of a domain name that consists of a trademark plus an additional term (here a geographical term tending to suggest sponsorship or endorsement by the Complainant) cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Moreover, the Complainant has demonstrated that the Respondent uses the domain name in order to offer infringing CLARINS’ cosmetic products under the Complainant’s trademark.

The Respondent has not submitted any evidence or arguments which could demonstrate its rights to, or legitimate interests in the disputed domain name. Neither has it rebutted any of the Complainant’s contentions.

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 it is improbable that the Respondent was unaware of the Complainant's name, trademark, reputation, and goodwill when the disputed domain name was registered.

The Respondent, by using the disputed domain name to offer unauthorized versions of the Complainant's products under the Complainant's trademark, is intentionally misleading Internet consumers and attempting to attract them, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark. The Panel finds that such behavior is evidence of bad faith.

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 <clarinses-es.shop> be transferred to the Complainant.

*/Zineb Naciri Bennani/*

**Zineb Naciri Bennani**

Sole Panelist

Date: August 2, 2024