

## ADMINISTRATIVE PANEL DECISION

Obagi Holdings Company Limited v. mike simon  
Case No. D2024-2672

### 1. The Parties

The Complainant is Obagi Holdings Company Limited, United Kingdom, represented by MSA IP Milojevic Sekulic & Associates, Serbia.

The Respondent is mike simon, United Kingdom.

### 2. The Domain Name and Registrar

The disputed domain name <obagibeauty.shop> is registered with NameSilo, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 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 July 2, 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 July 8, 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 July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2024.

The Center appointed Gareth Dickson as the sole panelist in this matter on August 15, 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 global skincare products company with a focus on research and skin biology. Established in 1988, the Complainant has developed skincare products for over 35 years. The Complainant operates under the OBAGI trademark (the “Mark”) and is known for its medical-grade skincare lines.

The Complainant, by itself or through its affiliated companies, is the proprietor of several trademark registrations for or incorporating the Mark around the world, including:

- United States of America Trademark Registration No. 2203028 for OBAGI, registered on November 10, 1998;
- European Union Trademark Registration No. 000164509 for OBAGI, registered on July 10, 1998; and
- International Registration No. IR1495947A for OBAGI, registered on July 31, 2019.

The Complainant also uses the domain name <obagi.com>, registered on January 26, 1998, to promote its products and services.

The disputed domain name was registered on April 9, 2024. Initially, the website associated with the disputed domain name appeared to offer the Complainant’s products sold under the Mark, albeit those products were of unknown origin and were being sold at prices significantly below their normal retail value. However, after the Complainant contacted the Respondent, the website’s content changed and it now offers unrelated products such as cups, bottles, pour spouts, and books.

The Complainant filed an amended Complaint following disclosure of the details on the WhoIs for the Respondent (and the Panel wishes to record its thanks to the Complainant for doing so using red text to identify the changes between the original Complaint and the amended Complaint). The Complainant noted that the address on the WhoIs for the disputed domain name is the address of the Sherlock Homes Museum in London, United Kingdom. There has been no known correspondence or relationship between the Complainant and the Respondent.

#### **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 argues that the disputed domain name is confusingly similar to the Mark, 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**

##### **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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Furthermore, 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 other terms, here “beauty”, 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. In particular, the Complainant has asserted, and the Respondent has not denied, that it has not authorised or licensed the Respondent to use the Mark. Furthermore, the Respondent's failure to make clear the nature of its relationship to the Complainant (in the sense that no such relationship exists) and to only use the disputed domain name to sell genuine goods put on the market with the Complainant's consent, means it could not, even if it had argued the point (which it did not), rely on the *Ok! Data* principles under this limb. [WIPO Overview 3.0](#), section 2.8.1.

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 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) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes the Respondent's registration of a domain name incorporating the Mark along with the addition of the term “beauty” under the generic Top-Level Domain <.shop>, and concludes that the Respondent registered the disputed domain name precisely because of its incorporation of the Mark,

and not by coincidence or for any other reason. Furthermore, the Respondent's use of the Mark in the disputed domain name to sell beauty care products was a deliberate attempt by the Respondent to attract Internet users for commercial gain by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Lastly, the Respondent's involvement in at least two previous adverse UDRP proceedings demonstrates a pattern of conduct of registering domain names in bad faith. See *Bostik SA v. mike simon*, WIPO Case No. [D2024-2298](#); *Martha Stewart Living Omnimedia, LP v. mike simon*, WIPO Case No. [D2024-2436](#). The use of false contact information (as reported above, the Complainant noted that the information disclosed by the Registrar for the Respondent related to the Sherlock Homes Museum in London, United Kingdom, and the Panel notes that the courier was ultimately unable to deliver the Center's written communication to the details disclosed) and the Respondent's failure to participate in these proceedings further support the inference of bad faith registration and use.

Therefore, the Panel concludes that the Respondent's registration and use of the disputed domain name satisfy the conditions of paragraph 4(a)(iii) of the Policy, which requires the Complainant to prove that the domain name has been registered and is being used 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 <obagibeauty.shop> be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: September 4, 2024