

## ADMINISTRATIVE PANEL DECISION

Clarins v. ssdafs fsadsfas  
Case No. D2024-2742

### 1. The Parties

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

The Respondent is ssdafs fsadsfas, United States of America.

### 2. The Domain Name and Registrar

The disputed domain name <clarins-discount.shop> (the “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 July 4, 2024. On July 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 6, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 July 11, 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 17, 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 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 8, 2024.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on August 12, 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 has been active in the field of cosmetics and make-up products for more than 60 years and owns a number of trade marks worldwide, including (hereafter the "Trade Marks"):

- French word mark CLARINS registered under No. 1637194 as of January 7, 1991
- European Union word mark CLARINS registered under No. 005394283 on October 5, 2010
- United Kingdom word mark CLARINS registered under No. UK00905394283 on October 5, 2010
- Canada word mark CLARINS registered under No. LMC645123 on July 29, 2005
- United States of America word mark CLARINS registered under No. 73746658 on January 2, 1990
- United States of America word mark CLARINS registered under No. 72361433 on May 30, 1972

The Domain Name was registered on March 18, 2024. It resolves to a website featuring the Trade Marks and the Complainant's logo and visuals representing products of 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 Domain Name, on the following grounds.

The Domain Name reproduces the Trade Marks with the addition of the descriptive element "discount" which refers to the characteristics of products which would be discounted. As the Trade Marks are easily recognizable within the Domain Name, this is confusingly similar to the Trade Marks.

The Respondent has no rights or legitimate interests in the Domain Name. It is not affiliated in any manner to the Complainant and has never been authorized to use or register the Trade Marks, including as a domain name. Furthermore, the Respondent is not making a fair use of the Domain Name, since it is used in relation with a website offering allegedly infringing cosmetic products under the Trade Marks which prominently features the Trade Marks and uses some of the same visuals of the products as used on the Complainant's official website under <clarins.fr>. The Respondent sells the allegedly infringing cosmetic products at a lower price than the authentic ones. By reproducing the Trade Marks and imitating the Complainant's official website, the Domain Name carries a risk of implied affiliation and the Respondent thereby misleads consumers and diverts them from the Complainant's official website, in order to create a commercial gain for himself. Such use, which relies on exploiting user confusion, does not constitute bona fide commercial use of the Domain Name. The Respondent has also registered and is using the Domain Name in bad faith. When the Domain Name was registered, the Complainant was already extensively using the Trade Marks worldwide for many years. In addition, the Trade Marks are well-known worldwide and the Respondent has no legitimate reason to register the Domain Name, but only the aim to act in bad faith by taking advantage of the confusion created by its fraudulent registration.

The Respondent was aware of the Trade Marks, evidenced by the similarities between the website associated with the Domain Name and the Complainant's website under <clarins.fr>. Bad faith is also apparent from the fact that the Respondent has taken steps to cover his identity and these circumstances clearly indicate that the Respondent uses the Domain Name in bad faith, primarily for the purpose of creating a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation or endorsement of its website under the Domain Name.

## 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 Trade Mark and the Domain Name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates CLARINS, of which the Trade Marks consist, in its entirety. The addition of a hyphen and the term "discount" does not prevent a finding of confusing similarity between the Domain Name and the Trade Marks (see [WIPO Overview 3.0](#), section 1.8; see also, inter alia, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The generic Top-Level Domain ".shop" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

### 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.

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has rights or legitimate interests in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the Trade Marks in their entirety with a descriptive term, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name. The Domain Name resolves to a website which replicates visuals of the Complainant's official website and prominently features the Trade Marks and the Complainant's logo and offers the Complainant's products at a discount price. This use of a domain name may, under circumstances, constitute a bona fide offering of goods or services, in particular if the respondent were a bona fide distributor of the complainant's products. The criteria therefor are set out in the *Okidata* decision (*Okidata Americas, Inc., v. ASD Inc.*, WIPO Case No. [D2001-0903](#)). In accordance with that decision, a service provider, such as the Respondent, using a domain name containing the complainant's trade mark 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 only if the following conditions are satisfied: (1) the respondent must actually be offering the goods or services at issue; (2) the respondent must use the site to sell only the trademarked goods (otherwise, there is the possibility that the respondent is using the trade mark in a domain name to bait consumers and then switch them to other goods); (3) the site itself must accurately disclose the respondent's relationship with the trade mark owner; and (4) the respondent must not try to "corner the market" in all relevant domain names, thus depriving the trade mark owner of the ability to reflect its own mark in a domain name.

The Complainant has not contested that the Respondent offers genuine CLARINS products on the website to which the Domain Name resolves. The Complainant has stated that these products are "infringing" (presumably on rights of the Complainant), but this has not been elaborated sufficiently in the Complaint, nor has the Complainant submitted evidence of such "infringing products". Furthermore, the Respondent's website appears to offer only products of the Complainant and not those of other (cosmetics) companies. On the other hand, the fact that the website at the Domain Name is purportedly used to offer for sale the Complainant's products at heavily discounted prices (around 70-80%), reproducing the visuals from the Complainant's official website, may raise a question as to whether the products on the website are genuine or not.

In any case, the Respondent does not, however, meet the third *Oki Data* requirement that it must accurately disclose its relationship with the Complainant.

The website at "www.clarins-discount.shop", to which the Domain Name resolves, does not contain a specific disclaimer in relation to the Complainant, nor does it specifically disclose the Respondent's relationship with the Complainant. There is no express mention on the website that the Respondent is independent from, or not affiliated to, the Complainant.

In the Panel's view, given the use of the Trade Marks, logo and product visuals of the Complainant on the Respondent's website there is therefore a serious risk that an Internet user typing in the Domain Name and seeing the website to which it resolves could be left with the impression that there is some commercial or legal relationship with the Complainant, when this is not the case.

As the Respondent therefore has not demonstrated that it meets all the criteria of the *Oki Data* decision, the Respondent's use of the Domain Name prior to the notice of the dispute cannot be considered to be in connection with a bona fide offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

Finally, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name as it offers the Complainant's products for sale, and it creates an impermissible risk of affiliation or endorsement with the Complainant.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

### **C. Registered and Used in Bad Faith**

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Name, the Respondent was or should have been aware of the Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some 50 years after the registration of the earliest of the Trade Marks;
- the Respondent has incorporated CLARINS, of which the Trade Marks consist, in their entirety, and this is not a generic term, nor a name that it is likely that a registrant would spontaneously think of when registering a domain name, particularly noting the use to which it has been put;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the use of the Trade Marks and the Complainant's logo and product visuals on the website to which the Domain Name resolves;
- the lack of a disclaimer accurately disclosing the Respondent's relationship with the Complainant;
- the lack of a Response to the Complaint; and
- the Domain Name resolves to a website using the Trade Marks and the Complainant's logo and reproducing visuals of the Complainant's official website.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, 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 <clarins-discount.shop> be transferred to the Complainant.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: August 26, 2024