

ADMINISTRATIVE PANEL DECISION

Clarins v. adfsdf sdfasdf

Case No. D2024-2819

1. The Parties

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

The Respondent is adfsdf sdfasdf, China.

2. The Domain Name and Registrar

The disputed domain name <clarinses-sale.shop> 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 10, 2024. On July 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 July 12, 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 12, 2024.

The Center appointed Geert Glas as the sole panelist in this matter on August 16, 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 major actor in the field of cosmetics and make-up products. It has been doing business for more than 60 years and it well-established worldwide.

The Complainant owns a large number of national trademark registrations which consist of the word CLARINS and cover cosmetics in class 3 and beauty care services in class 44. These trademark registrations include:

- French Trademark n° 1637194 CLARINS, filed on January 7, 1991;
- European Union Trademark n° 005394283 CLARINS, filed on October 17, 2006; and
- United States of America Trademark n° 73746658 CLARINS, filed on August 17, 1988.

The name CLARINS is also the company name of the Complainant which owns a number of domain names consisting of the word CLARINS, such as <clarins.es> (registered since July 1998) and <clarins.fr> (registered since August 19, 1996).

The CLARINS mark enjoys a strong reputation and is well known on a global basis as has been confirmed by previous UDRP panels.

The disputed domain name was registered on March 14, 2024.

It appeared from the evidence provided by the Complainant that the disputed domain name dynamically redirected to a Spanish language website which replicated the Complainant's website by prominently displaying the CLARINS trademark and logo and offering for sale CLARINS products for which the exact same visuals are used as those on the Complainant's website.

According to the Complainant, the prices of the CLARINS products offered for sale on this website to which the disputed domain name redirected were significantly lower than the Complainant's genuine products.

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 reproduces its CLARINS trademark with the additions of the elements "es" and "-sale". According to the Complainant the "es" element will be perceived as the geographic extension "es" for Spain while the word "sale" is not sufficient to avoid confusion with the Complainant's prior CLARINS trademarks since it is merely descriptive.

The Complainant states that the Respondent is not affiliated in any manner to the Complainant and has never been authorized to use or register the well-known name "Clarins" in any way, including as a domain name. The Complainant also contends that the disputed domain name is used in relation with a website offering infringing CLARINS cosmetic products under the Complainant's trademark and logo but at discounted prices and which is a knock-off version of the Complainant's official website.

According to the Complainant, it is obvious that the Respondent knew the prior rights and wide use of CLARINS by the Complainant and as a result registered the disputed domain name in bad faith.

The Respondent also used the disputed domain name in bad faith as he created a likelihood of confusion with the Complainant's CLARINS trademark as to the source, sponsorship and affiliation of its website.

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 trade and service marks 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 terms "es" and "-sale" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Based on the available record, 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 indeed no evidence whatsoever of the Respondent being permitted to use the disputed domain name, of the Respondent using the disputed domain name (or having demonstrable plans for such use) in the framework of a bona fide offering, of the Respondent being commonly known by the disputed domain name or of the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

To the contrary, the Respondent has used the disputed domain name to dynamically redirect Internet users to a website which resembles the Complainant's website by prominently displaying the CLARINS trademark

and logo and offering for sale CLARINS products (but with discounts of around 80%) for which the exact same visuals are used as those on the Complainant's website.

Moreover, the presence of the elements "es" and "-sale" in the disputed domain name creates an even increased risk of affiliation with the Complainant as "es" is the country code for Spain (as in the Complainant's "clarins.es" website) and "sale" can be perceived as a reference to the Complainant's retail activities. As a result, the Respondent cannot be said to have put the disputed domain name to a fair use.

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

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that 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.

As to the registration of the disputed domain name, it should be noted that panels have consistently found that the mere registration of a domain name which is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

This is clearly the case here, as CLARINS had become a widely-known trademark by the time the disputed domain name was registered. As a result, the Respondent knew or should have known that its registration of the disputed domain name which fully incorporates Complainant's CLARINS mark would be confusingly similar to the Complainant's mark.

The fact that the Respondent choose to incorporate the elements "es" and "-sale" in the disputed domain name does not alter this finding. To the contrary, "es" may be perceived by the public as the country code for Spain, as in the Complainant's "clarins.es" website. This seems to indicate that the Respondent, when registering the disputed domain name, already intended to use it in relation to a Spanish language website. Similarly, "sales" can be interpreted as referring to the retail activities of the Complainant.

Based on the available record, the Panel finds that the disputed domain name has been registered in bad faith.

Paragraph 4(b)(iv) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name is being used in bad faith: by using the domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or a product or service on its website or location.

In the present case, the disputed domain name which is confusingly similar to the Complainant's CLARINS mark redirects to a website which replicates the Complainant's website by prominently displaying the CLARINS trademark and logo and offering for sale CLARINS products for which the exact same visuals are used as those on the Complainant's website. This use clearly constitutes an intentional attempt by the Respondent to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's CLARINS mark as to the source, affiliation or endorsement of the website to which the disputed domain name resolves.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods and impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

It should be noted though that the Respondent could have brought forward any argument in support of the good faith nature of its registration and use of the disputed domain name by filing a response to the Complaint. The Respondent has however opted not to seize this opportunity to provide any justification for its actions.

As a result and based on the available record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and that 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 <clarinses-sale.shop> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: August 30, 2024