

ADMINISTRATIVE PANEL DECISION

Clarins v. eee qeqe, dasdhuighjbvvhbjhb
Case No. D2024-2833

1. The Parties

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

The Respondent is eee qeqe, dasdhuighjbvvhbjhb, China.

2. The Domain Name and Registrar

The disputed domain name <clarins-online.shop> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on July 11, 2024. On July 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 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 15, 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 in English on July 18, 2024.

On July 15, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in Chinese and English of the Complaint, and the proceedings commenced on July 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 14, 2024.

The Center appointed Rachel Tan 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

Established in 1954, the Complainant is a French company that has been running business in the field of cosmetics and make-up products for more than 60 years. The Complainant has presence in more than 150 countries.

The Complainant is the owner of CLARINS mark in various jurisdictions. For example, French registration no. 1637194 for CLARINS registered on January 7, 1991 in Classes 1 to 45; European Union Trade Mark registration no. 005394283 for CLARINS registered on October 5, 2010 in Classes 3, 5, 10, 16, 21, and 44 and United States of America registration no. 935002 for CLARINS registered on May 30, 1972 in Class 3.

The Complainant is also the registrant of numerous domain names incorporating the CLARINS mark, for example <clarins.fr> registered on August 19, 1996 and <clarinsusa.com> registered on November 11, 1997.

The disputed domain name was registered on March 11, 2024. Based on the evidence submitted by the Complainant, the disputed domain name previously resolved to a website mainly in French which allegedly to be a knock-off version of the Complainant's official website at "www.clarins.fr". The website was alleged to offer the Complainant's products for sale at reduced prices by prominently displaying the Complainant's CLARINS mark with the Complainant's original products images. At the time of this Decision, the disputed domain name resolves to a holding page displaying the message "c***s The website is 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.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's CLARINS mark. The Complainant's CLARINS mark is reproduced in entirety in the first position of the disputed domain name. The additional term "online" is a generic term which indicates online presence of an entity and cannot distinguish the disputed domain name from the Complainant's mark.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has never been authorized to use the Complainant's CLARINS mark or register the disputed domain name. It is not affiliated to the Complainant in any manner. Moreover, the Complainant has submitted evidence and alleges that the disputed domain name was previously operated as a website to impersonate the Complainant to sell infringing CLARINS products at heavily reduced price. Accordingly, the Respondent is not making legitimate, noncommercial, or fair use of the disputed domain name.

Finally, the Complainant argues that the disputed domain name was registered and is being used in bad faith. Given the well-known character of the Complainant's CLARINS mark worldwide, the Respondent must have been aware of the Complainant and its trade mark at the time of registering the disputed domain name. The Respondent's actual knowledge is further reinforced by the fact that the disputed domain name was previously resolved to a website that imitated the Complainant's official website. The registration and use of the disputed domain name indicate that the Respondent has used the disputed domain name primarily for the purpose of creating a likelihood of confusion with the Complainant's CLARINS mark as to the source, affiliation, or endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the disputed domain name was registered in English and Latin script, (ii) the Complainant is unable to communicate in Chinese and hence the translation of the Complaint would unfairly be a disadvantage and burden for the Complainant which also will delay the proceeding and adjudication of this matter; (iii) the webpage to which the disputed domain name resolved showed content in French and Spanish instead of Chinese.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 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.

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 term here, i.e., "online" 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.

Lastly, it is permissible for the Panel to disregard the applicable Top-Level Domain ("TLD") in the disputed domain name, i.e., ".shop". It is accepted by UDRP panels that the practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to "new gTLDs") and the ordinary meaning ascribed to a particular TLD would not necessarily impact

assessment to the first element. [WIPO Overview 3.0](#), sections 1.11.1 and 1.11.2. See also *Wig Studio 1, LLC v. Jamar Harry*, WIPO Case No. [D2023-2550](#).

Based on the available records, 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.

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify his or her choice of the disputed domain name that is confusingly similar to the Complainant’s CLARINS mark. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in any of them. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant’s CLARINS mark or register the disputed domain name.

At the time of this Decision, the disputed domain name resolves to a page under maintenance. Based on the undisputed submission and evidence provided by the Complainant, the disputed domain name previously resolved to a website which allegedly attempted to impersonate the Complainant, purportedly offered CLARINS products at heavily reduced prices and displayed the Complainant’s CLARINS mark. The website did not accurately and prominently disclose a lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of a bona fide offering of goods or services under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Furthermore, the nature of the disputed domain name, comprising the Complainant’s CLARINS mark with the addition of the generic term “online”, carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Based on the available records, 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 the disputed domain name was registered at least 50 years after the first use and registration of the Complainant's CLARINS mark. Search results using the key word "clarins" on search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the mark and the Complainant has been established. The Panel notes that the disputed domain name previously resolved to a website that displayed the Complainant's mark and original photos of the Complainant's products. As such, the Respondent clearly knew of the Complainant's marks when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Furthermore, the Panel considers the mere registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The Panel notes that the disputed domain name previously resolved to a website purportedly offering CLARINS products and displayed the Complainant's CLARINS marks. The lack of a disclaimer that the Respondent is not affiliated with the Complainant is noticeably absent. The Panel is satisfied that the Respondent has intentionally created a likelihood of confusion with the Complainant's CLARINS mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

In addition, the Panel found that the current non-use of a domain name (i.e., a "under maintenance" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's CLARINS mark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Given all the circumstances of the case, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name, and considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above as well as continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available records, 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 <clarins-online.shop> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: August 29, 2024