

ADMINISTRATIVE PANEL DECISION

Clarins v. chen fa
Case No. D2024-3109

1. The Parties

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

The Respondent is chen fa, China.

2. The Domain Name and Registrar

The disputed domain name <clarins-eu.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 30, 2024. On July 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 August 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 August 5, 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 August 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 30, 2024.

The Center appointed David Stone as the sole panelist in this matter on September 6, 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 established in 1954, which manufactures and sells skincare and makeup products, and operates in over 150 countries.

Among others, the Complainant owns the following registered trademarks:

- CLARINS: United States of America (“United States”) Trademark registration no. 1574179, registered on January 2, 1990, in international class 3;
- CLARINS: French Trademark registration no. 1637194, registered on January 7, 1991, in international classes 1 to 45; and
- CLARINS: European Union Trademark registration no. 5394283, registered on October 5, 2010, in international classes 3, 5, 10, 16, 21, and 44. (Collectively, referred to as the “Marks”)

The Complainant is also the owner of the domain name <clarins.com> which it has held since March 16, 1997, and which it uses internationally, including in the United States. The Complainant has also used <clarinsusa.com> in the United States since November 11, 1997.

The disputed domain name was created on July 12, 2024. The Complainant has provided evidence that the Respondent has previously maintained a website at the disputed domain name which (i) displayed the Marks prominently and numerous; (ii) used multiple product images from the Complainant’s official website; (iii) employed a similar design to the Complainant’s official website; and (iv) offered for sale serums, gels, mascara, and other makeup and skincare items bearing signs identical to the Marks at heavily discounted prices without any prominent disclaimer of lack of association with the Complainant. At the date of this decision, the disputed domain name appears to return no data.

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 contends that, under the first element, the disputed domain name reproduces the Marks with the addition of “-eu”, which is a geographic term for the European Union. As such, the Complainant says the disputed domain name is confusingly similar.

Under the second element, the Complainant contends that the Respondent is not affiliated in any manner to the Complainant and has never been authorized to use the Marks in any way. Further, the Complainant contends that the Respondent is not making a fair use of the disputed domain name because it is used in relation with a website which is unauthorized, offers infringing versions of the Complainant’s cosmetic products under the Complainant’s Marks at a much lower price and is a “knock-off version” of the Complainant’s official website.

Under the third element, the Complainant contends that it was already extensively using the Marks worldwide well before the creation date of the disputed domain name. The Respondent knew the prior rights and wide use of the Marks by the Complainant. The reproduction of the Complainant’s Marks and the use of

the same visuals to sell cosmetics products are not a mere coincidence. Further, the Respondent has taken steps to cover its identity.

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.

The entirety of the Marks are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "-eu", may bear on the 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 Marks 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. 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.

Further, the website to which the Complainant's evidence shows the disputed domain name previously resolved does not appear to fall under the safeguards of fair use envisioned under section 2.8 of the [WIPO Overview 3.0](#), given there is no prominent disclaimer as to the lack of the website's association with

the Complainant - to the contrary, the website used the Marks in the top left of the website where consumers would expect to find the name of the operator of the website.

Furthermore, panels have held that the use of a domain name for illegal activity, here, claimed sale of counterfeit goods and impersonation/passing off (albeit not claimed in those terms), or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent, while currently not hosting a website at the disputed domain name, previously created and hosted a website at the disputed domain name which: (i) displayed the Marks prominently and numerous; (ii) used multiple product images from the Complainant's official website; (iii) employed a similar design to the Complainant's official website; and (iv) offered for sale serums, gels, mascara, and other makeup and skincare items bearing signs identical to the Marks at heavily discounted prices without any prominent disclaimer of lack of association with the Complainant.

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.

Panels have found that evidence of a respondent seeking to cause confusion supports a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark. [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the content of the website previously hosted at the disputed domain name is strongly suggestive of bad faith because it is evidence of the Respondent seeking to cause confusion. The prominent and numerous use of the Marks (including in the top left of the website where consumers would expect to find the name of the operator of the website), the similar website design and multiple product images from the Complainant's official website show an intention of the Respondent to confuse and thereby attract users to its website for commercial gain.

Panels have also found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. The Panel notes the distinctiveness or reputation of the Complainant's Marks, and the composition of the disputed domain name, and finds that in the circumstances of this case the present passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Further, panels have held that the use of a domain name for illegal activity, here, claimed sale of counterfeit goods and impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Respondent has not attempted to refute any of the Complainant's contentions, which casts additional doubt on the nature of its conduct. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel concludes that the actions of the Respondent in choosing the disputed domain name were aimed at attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Marks. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

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-eu.shop> be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: September 19, 2024