

## **ADMINISTRATIVE PANEL DECISION**

Elemis USA, Inc. v. My Store, Admin  
Case No. D2024-3152

### **1. The Parties**

Complainant is Elemis USA, Inc., United States of America (“U.S.” or “United States”), represented by IP Twins, France.

Respondent is My Store, Admin, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <elemiscollections.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”)

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. The Center sent reminders to the Registrar on August 16, August 19, August 28, August 29, September 2, and September 11, 2024. On September 13, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 13, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 16, 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 Respondent of the Complaint, and the proceedings commenced on September 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 7, 2024.

The Center appointed John C McElwaine as the sole panelist in this matter on October 18, 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**

Complainant is part of the L'Occitane group of companies. Complainant manufactures and distributes award-winning face and body skincare products. Complainant owns numerous trademark registrations worldwide, including the following trademark registrations relevant to this matter:

- ELEMIS, United States Reg. No. 1678043, registered on March 3, 1992, and designating goods in international class 03;
- ELEMIS, European Union Trademark No. 3880366, registered on October 10, 2005, and designating services in international class 44; and
- ELEMIS, Canadian Trademark No. TMA758305, registered on January 29, 2010, and designating goods in international classes 3 and 5.

Collectively, these registered trademark rights are referred to as the "ELEMIS Mark". Complainant also has owned the domain name <elemis.com> since 1997.

The Domain Name <elemiscollections.com> was registered on June 1, 2024, and resolves to a Shopify webpage stating, in part, "Sorry, this store is currently unavailable".

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

With respect to the first element of the Policy, Complainant asserts that the Domain Name is identical or confusingly similar to its registered ELEMIS trademark. It argues that the Domain Name incorporates the ELEMIS Mark in its entirety, with the addition of the term "collections", which does not prevent a finding of confusing similarity.

Complainant claims that Respondent has no rights or legitimate interests in the Domain Name. It states that Respondent was never authorized to use Complainant's trademarks and that there is no evidence of any bona fide offering of goods or services associated with the Domain Name. Complainant notes that the Domain Name resolves to a Shopify-powered page that is empty of any content made by Respondent.

Regarding bad faith, Complainant alleges that Respondent registered and is using the Domain Name primarily to profit from and exploit Complainant's well-known ELEMIS Mark. Complainant argues that Respondent's registration of the Domain Name that is similar to Complainant's well-known trademark without rights or legitimate interests supports an inference of registration in bad faith. Complainant also points out that Respondent's passive holding of the Domain Name constitutes bad faith use.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); and *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

### A. Identical or Confusingly Similar

The Panel finds that Complainant has established rights in the ELEMIS Mark through its numerous trademark registrations worldwide, as evidenced by the registrations recited in the Factual Background section above.

The Domain Name incorporates Complainant's ELEMIS Mark in its entirety, with the addition of the term "collections". As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

Therefore, the Panel concludes that the Domain Name is confusingly similar to Complainant's ELEMIS Mark, and Complainant has satisfied the first element of the Policy.

### B. Rights or Legitimate Interests

Complainant must make a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name, after which the burden of production shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests. See section 2.1 of the [WIPO Overview 3.0](#).

Here, Complainant has stated that it has not licensed or otherwise authorized Respondent to use its ELEMIS Mark or to register domain names incorporating the mark. There is no evidence that Respondent has been commonly known by the Domain Name or that Respondent has acquired any trademark rights in the term "ELEMIS COLLECTIONS".

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy<sup>1</sup> or otherwise.

---

<sup>1</sup> The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

The Panel finds that Respondent's use of the Domain Name to resolve to a Shopify-powered page empty of any content does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. In this case, while the page is currently empty, the potential for future use that infringes on Complainant's rights is evident. Respondent could have come forward with an explanation but did not. Instead, no response was filed, and the likely false registration details indicated that the Respondent lives in North Carolina and has no connection to a business or other apparent legitimate reason to use the ELEMIS Mark. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc. v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the domain name at issue. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Lastly, the Panel finds that Respondent is not making any use, let alone bona fide use, of the Domain Name under paragraph 4(c), as the Domain Name resolves to an inactive webpage. It is well established that inaction or passive holding can, in certain circumstances, constitute bad faith use. See *CBS Broadcasting Inc. v. Edward Enterprises*, WIPO Case No. [D2000-0242](#). Here, with no explanation from Respondent concerning its intent, their passive holding of the Domain Name incorporating the ELEMIS Mark does not amount to a bona fide use.

Based on the foregoing, Complainant has made a prima facie showing of Respondent's lack of any right or legitimate interest and Respondent has failed to come forward with evidence to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Based on Complainant's submissions, which were not rebutted by Respondent, Respondent must have known or had constructive notice of Complainant's ELEMIS Mark when Respondent registered the Domain Name. Furthermore, and as also detailed above, Respondent is not commonly known by the Domain Name and does not have any legitimate interest in the Domain Name. Accordingly, on the record, there is no explanation or legitimate interest to justify Respondent's choice to register the Domain Name. With no response from Respondent, this claim is undisputed, and the Panel can infer bad faith, particularly in light of the other elements of bad faith discussed below.

Furthermore, the fact that the Domain Name does not resolve to a website and is being passively held does not obviate a finding of bad faith. When a domain name is being passively held, the question of bad faith use does not squarely fall under one of the aforementioned non-exhaustive factors set out in paragraph 4(b) of the Policy. Section 3.3 of the [WIPO Overview 3.0](#), instructs that panelists should examine the totality of the circumstances in each case and that the following factors that have been considered relevant in applying the passive holding doctrine: "(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the

---

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." *Id.* Complainant submitted evidence that the ELEMIS Mark has been registered for more than 30 years in the United States and for a significant time in other countries. Respondent has not offered any evidence to rebut this conclusion. Furthermore, by virtue of its failure to respond to the Complaint, Respondent provided no evidence of its intended use of the Domain Name. In fact, Respondent is not using the Domain Name in any manner to demonstrate a bona fide use or potential use. In addition, Respondent concealed its true identity by using a proxy service that likely employed false contact information, or Respondent intentionally did not respond to the Complaint. In light of these factors, the Panel finds that Respondent's passive holding of the Domain Name satisfies the requirement of paragraph 4(a)(iii) of the Policy that the Domain Name was registered and is being used in bad faith by Respondent.

For the reasons set forth above, the Panel finds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name, <elemiscollections.com>, be transferred to Complainant.

*/John C McElwaine/*

**John C McElwaine**

Sole Panelist

Date: October 30, 2024