

ADMINISTRATIVE PANEL DECISION

Aesthetic Technology Limited v. Billy Weiler, WLB COMPANY INVEST
Case No. D2024-3418

1. The Parties

The Complainant is Aesthetic Technology Limited, United Kingdom (or “UK”), represented by Murgitroyd & Company, UK.

The Respondent is Billy Weiler on behalf of the WLB COMPANY INVEST, France.

2. The Domain Name and Registrar

The disputed domain name <dermilux.com> is registered with OVH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 21, 2024. On August 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 22, 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 (REDACTED FOR PRIVACY, WLB COMPANY INVEST) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 26, 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 28, 2024.

On August 26, 2024, the Center informed the Parties in French and English, that the language of the registration agreement for the disputed domain name is French. On August 28, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent objected to the Complainant’s request on September 23, 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 September 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2024. The Respondent sent an email communication to the Center on September 23, 2024, regarding the language of the proceeding.

The Center appointed Emre Kerim Yardimci as the sole panelist in this matter on October 7, 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 an UK based company producing medical device for professional LED Phototherapy under its brand DERMALUX and is founded in 2012.

The Complainant's DERMALUX brand incorporates a portfolio of 3 LED devices, with over 10,000 clients and a network of international partners covering more than 40 countries across the world.

The Complainant is the owner of following trademark registrations for DERMALUX:

- United Kingdom Trademark Registration No. UK00914333116 DERMALUX registered on April 26, 2017, in Classes 10 and 44;
- European Union Trademark Registration No. 014333116 DERMALUX registered on April 26, 2017, in Classes 10 and 44;
- International Trademark Application No. 1641690 DERMALUX registered on November 16, 2021, in Classes 10 and 44, designating Brazil, Japan, New Zealand, Republic of Korea, Russian Federation, and;
- United States of America Trademark Registration No. 5425749 DERMALUX registered on March 20, 2018, in Classes 10 and 44.

The Complainant operates a website at "www.dermaluxled.com" and has had a considerable presence on social media since 2012.

The disputed domain name was registered on June 14, 2024, and it resolves to a website commercializing LED Phototherapy products directly intended to be used by consumers.

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 asserts that the disputed domain name is confusingly similar to the Complainant's DERMALUX trademark in which it has rights. The disputed domain name is almost identical to the Complainant's DERMALUX trademark as the only difference is the changing of the fifth letter from an "a" to an "i". According to the Complainant this is a clear situation of misspelling of its DERMALUX trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been authorized or licensed by the Complainant to use the DERMALUX trademark in any manner. To the best of the Complainant's knowledge, the Respondent has never been commonly known by the disputed domain name nor acquired any trademark rights in "dermalux".

There has been no bona fide offering of goods by the Respondent in its manner of use of the disputed domain name as it commercializes similar and competing products to the Complainant's product. Therefore, the Respondent is trying to generate traffic for its own commercial benefit which is not a bona fide intention to use.

The Respondent is well aware of the Complainant's DERMALUX trademark at the time the disputed domain name was registered as the Complainant's DERMALUX trademark is known for 12 years before the time of the registration of the disputed domain name and that the Respondent is using DERMILUX for almost the same product.

The Complainant, therefore, claims that the Respondent is using the disputed domain name with the aim to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark and for the purpose of disrupting the Complainant's business and targeting the Complainant's trademark and its clients.

B. Respondent

The Respondent requests that the language of the proceedings be in French as registration agreement is in French, and that he is not familiar with the English language and the use of the French language is essential for him as he can only understand and respond the claims made against him. He thereby requests that all the documents be translated into French.

Moreover, the Respondent did not reply to the Complainant's contentions by claiming that he does not have a good command in English to understand and respond to the claims made against him.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French.

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:

- the underlying website is entirely in English,
- the telephone number mentioned on the underlying website indicates the State of Iowa, United States of America which shows in turn that the website is run by a business based in the State of Iowa, United States of America.

The Respondent did make a specific submission with respect to the language of the proceeding and requested that the language of the proceeding be French claiming that the language of the registration agreement is French and that his first language is French and for this reason cannot fully understand and reply to the claims made against him and that he did not participate to the proceedings for that reason as he does not have a sufficient command of the English language.

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 as the Panel believes that the Respondent should have a sufficient command of understanding the English language considering that he appears to be running a business in the United States of America and the website hosted on the disputed domain name is entirely in English. Moreover, from a cursory Internet search, the Panel notes that the organization mentioned for which the Respondent "acts on behalf of" appears to be based in the UK. Lastly, the Respondent was invited to provide a Response in English or French in the Center's notification of the Complaint (that was sent in both English and French), and the Panel would have understood and considered a Response in French, but the Respondent did not do so. Ultimately, given the conflicting information indicating a presence in primarily English-speaking countries (e.g., the United States of America and the UK) and the elaborate English-written website hosted on the disputed domain name, the Panel notes that the Respondent could at least show that he has a right and legitimate interest for the term "dermilux" in anywhere in the world including in France, where he is domiciled. For this reason, the Panel wonders whether the Respondent's intention in solely communicating as to the language of the proceedings was to frustrate these proceedings.

6.2. Substantive Issues

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove the followings:

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

A. Identical or Confusingly Similar

The Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

As indicated above, the Complainant holds several trademark registrations for the trademark DERMALUX.

The Panel finds the disputed domain name <dermilux.com> is confusingly similar to DERMALUX trademark with the sole difference between the letter "a" and "i" on the fifth letter. Such minor difference is not sufficient to prevent a finding of confusing similarity between the trademark from the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Panel further finds that this is also a special case of misspelling. [WIPO Overview 3.0](#), section 1.9.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

The 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.

The Panel accepts the Complainant’s submissions that the Respondent does not appear to be known by the disputed domain name, has not used, or made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, is not making a legitimate noncommercial or fair use of the disputed domain name, and has no consent from the Complainant to use its trademark.

The Respondent has not contested the Complaint.

The typo squatting nature of the disputed domain name is inherently misleading, reflecting the Respondent’s intent to mislead Internet users expecting to find the Complainant and are instead directed to a website offering competing products to those of the Complainant. Such action is clearly commercial in nature and also amounts to impersonation of the Complainant and prior panels have held that the use of a domain name for illegal activity here, which is impersonation/passing off, 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 finds that the Complainant has established the third element of the Policy.

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.

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.

In the present case, the Panel accepts the Complainant’s assertions that the trademark DERMALUX is a well-known trademark. The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#); *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#); *Microsoft Corporation v. Montrose Corporation*, WIPO Case No. [D2000-1568](#)).

The Complainant’s trademark was registered for not less than 7 years at the time of the registration of the disputed domain name and the Complainant’s company had been established 12 years before the disputed domain name.

The Panel notes that the use of a domain name for illegal activity which is impersonation/passing off constitutes bad faith. As a matter of fact, considering that the products which are commercialized by the Respondent on the underlying website are in fact a very specialized product, it is plausibly unconceivable that the Respondent was not aware of the Complainant's website and its products at the time of the registration of the disputed domain name and during the use of the disputed domain name.

The Panel is convinced that the Respondent had the Complainant's trademark in mind at the time of its registration and intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

Therefore, having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <dermilux.com> be transferred to the Complainant.

/Emre Kerim Yardimci/

Emre Kerim Yardimci

Sole Panelist

Date: October 28, 2024