

ADMINISTRATIVE PANEL DECISION

L'Oréal v. Private Whois, Knock Knock WHOIS Not There, LLC / Valerie Harper
Case No. D2022-0518

1. The Parties

The Complainant is L'Oréal, France, represented by Dreyfus & associés, France.

The Respondent is Private Whois, Knock Knock WHOIS Not There, LLC, United States of America ("United States") / Valerie Harper, United States.

2. The Domain Name and Registrar

The disputed domain name <lorealll.com> is registered with Automattic Inc. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 17, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 19, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2022 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 February 24, 2022.

The Registrar also indicated that the language of the Registration Agreement was Indonesian. The Complaint was filed in English. The Center sent an email communication to the Complainant on February 21, 2022, inviting the Complainant to provide sufficient evidence of an agreement between the Parties for English to be the language of proceeding, a Complaint translated into Indonesian, or a request for English to be the language of proceedings. The Center also invited the Respondent to submit comments. The Complainant filed a request for English to be the language of proceedings on February 24, 2022 and the Respondent did not submit any comments.

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 March 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on March 25, 2022. 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 industrial group specialized in the field of cosmetics and beauty, which is present in 150 countries with 86,000 employees.

The Complainant is the owner of numerous trademark registrations for L’ORÉAL across the world, *inter alia*, United States Trademark L’ORÉAL No. 86705120, registered on April 26, 2016 and covering goods in class 3, and International trademark No. 184970 protected in, *inter alia*, Serbia, Switzerland, Germany, Italy, Romania, Egypt, Mongolia, Viet Nam, Morocco, dated May 23, 1955, duly renewed, and covering goods in classes 3 and 5.

The Complainant further operates the domain name reflecting its trademarks in order to promote its services <loreal.com> registered on October 24, 1997.

The disputed domain name was registered on September 7, 2021, and resolves to a website powered by WordPress offering cosmetics for sale, without any active email server.

5. Parties’ Contentions

A. Complainant

The Complainant contends as follows:

(1) The disputed domain name is nearly identical to the mark L’ORÉAL, with the final letter “l” tripled at the end. The disputed domain name creates a typographical misspelling, when compared to the Complainant’s L’ORÉAL trademark.

(2) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is neither affiliated with nor has been licensed or permitted to use the L’ORÉAL mark or any domain names incorporating the L’ORÉAL mark. Besides, the Respondent is not commonly known by the disputed domain name. The Respondent’s inactive holding of the disputed domain name is neither a *bona fide* offering of goods or services nor legitimate noncommercial or fair use of the disputed domain name.

(3) The Respondent registered and is using the disputed domain name in bad faith. Given the Complainant’s worldwide reputation, the Respondent was or should have been aware of the L’ORÉAL mark prior to registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue – Language of the proceeding

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Indonesian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant respectfully requests that the language of proceedings be English. It submits that the Complainant is located in France and has no knowledge of Indonesian. To proceed in this language, the Complainant would have to retain specialized translation services at a cost that are likely to be high. Consequently, the use of another language other than English in the proceeding would impose a burden on the Complainant, which must be deemed significant in view of the cost for the present proceedings.

In many relevant UDRP decisions, previous panels have decided that since the Complainant is unable to communicate in the language of the Registration Agreement, the proceeding would inevitably be delayed unduly, and the Complainant would have to incur substantial expenses if the Complainant were to submit all documents in said language.

The Center has sent all its communications to the Respondent in both English and Indonesian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted any Response or any objections to the Complainant's request that the proceedings be held in English. This satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient. Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

6.2 Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

To succeed in a UDRP complaint, the Complainant has to demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, namely:

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

The Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the

Complaint, the Panel's decision shall be based upon the Complaint.

However, even if the Respondent has not replied to the Complainant's contentions, the Complainant still bears the burden of proving that all these requirements are fulfilled. Concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has demonstrated ownership of its L'ORÉAL trademarks, and, therefore, the Panel is satisfied that the Complainant has registered trademark rights in the L'ORÉAL mark.

The disputed domain name reproduces the trademark and company name L'ORÉAL with the final letter "l" tripled. The Panel finds that it does not significantly affect the appearance or pronunciation of the disputed domain name. The Panel also finds that the Respondent's conduct constitutes a clear case of "typosquatting", which creates a virtually and phonetically confusingly similar mark to the Complainant's trademark and consequently could not avoid a finding of confusing similarity between the disputed domain name and the L'ORÉAL mark. Moreover, the first visual impression caused by the disputed domain name is the same of the Complainant's official domain name <loreal.com>. As decided in previous UDRP decisions, the practice of typosquatting creates domain names that are confusingly similar to a relevant trademark by, for example, removing, shuffling or adding letters, as has occurred in this case. See section 1.9 of the [WIPO Overview 3.0](#).

The generic top-Level Domain ("gTLD") ".com" is not to be taken into consideration when examining the identity or similarity between the Complainant's trademark and the disputed domain name (section 1.11.1 of the [WIPO Overview 3.0](#)). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity.

Similarly, the disputed domain name <lorealll.com> is virtually identical to the Complainant's domain name <loreal.com> easing eventual typing error by Internet users; thus, resulting to diversion from the Complainant's website to that of the Respondent.

For all the above-cited reasons, it is established that the Complainant has trademark rights in the name comprised in the disputed domain name and that the disputed domain name is identical or confusingly similar to the Complainant's trademarks. Therefore, the conditions of paragraph 4(a)(i) are fulfilled.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is well established that, as it is put in the [WIPO Overview 3.0](#), section 2.1, while the overall burden of proof in the proceedings is on the complainant, proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, [WIPO Case No. D2003-0455](#).

As it was duly established by the Panel, there are no indications of any rights or legitimate interests of the Respondent in respect of the disputed domain name. The Complainant contends that the Respondent is neither affiliated with the Complainant nor making any *bona fide* use of the disputed domain name.

The Respondent is not commonly known by the name “l'oréal”, nor in any way affiliated with the Complainant, nor authorized or licensed to use the L'ORÉAL trademark, nor to seek registration of any domain name incorporating said trademark.

Furthermore, there are no evidence, including the Whois record for the disputed domain name, which would suggest that the Respondent is commonly known by the disputed domain name, and, thus, is regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Additionally, having carefully examined all the documents filed by the Complainant, the Panel came to the conclusion that by registering the disputed domain name that differs from the famous mark L'ORÉAL by only two additional letters, the Registrant seeks to take advantage of users. Previous UDRP panels have also found that “typosquatting” does not constitute a legitimate use of a trademark (*FragranceX.com, Inc. v. Argosweb Corp a/k/a Oleg Techino in this name and under various aliases* WIPO Case No. [D2010-1237](#)).

For all of the above-cited reasons, it is established that the Respondent has no rights or legitimate interests in respect to the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy it should be established that the disputed domain name has been registered and is being used in bad faith.

The Panel has come to the conclusion that the composition of the disputed domain name <loreall.com>, which entirely reproduces Complainant's trademark L'ORÉAL, confirms that the Respondent was aware of the Complainant and its trademark. Prior UDRP panels have held that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (*LEGO Juris A/S v. store24hour*, WIPO Case No. [D2013-0091](#),). Given the reputation of the L'ORÉAL trademark, registration in bad faith can be inferred.

It should be also mentioned that the Complainant's L'ORÉAL trademark registrations significantly predate the registration date of the disputed domain name. Taking into account the worldwide reputation of the Complainant and its trademark, as well as the high level of notoriety of the Complainant, it is hard to believe that the Respondent was unaware of the existence of the Complainant and its trademark at the time of registration of the disputed domain name. It is most likely to be believed that the Respondent registered the disputed domain name <loreall.com> based on the notoriety and attractiveness of the Complainant's trademark to divert Internet traffic to its website.

Equally, registering the disputed domain name <loreall.com> which is confusingly similar to the trademark L'ORÉAL and the official domain name <loreal.com>, since the addition of the double letter “l” is a form of typosquatting, is in itself evidence of bad faith.

Previous UDRP panels have considered that in the absence of any license or permission from the Complainant to use such widely known trademark, no actual or contemplated *bona fide* or legitimate use of the domain name could reasonably be claimed.

The disputed domain name clearly constitutes a typosquatting variant of the Complainant's trademark L'ORÉAL and its official domain name <loreal.com>, which is sufficient to establish use and registration in bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Moreover, the disputed domain name directs to a Wordpress website presenting and offering cosmetics for sale, thus directly targeting the Complainant's field of activity. It is very clear that the Respondent chose and used this domain name in order to create a

likelihood of confusion with the Complainant's renown trademark, and thus benefit from it.

The Panel is of the view that, it is more likely than not, that the Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of the Complainant's trademark rights, through the creation of initial interest of confusion.

All aforementioned circumstances confirm that the disputed domain name is not only registered, but also used in bad faith.

Moreover, the Panel has taken into account that the disputed domain name is currently inactive as it redirects to a parking page stating that the page is not working. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#)).

In light of the above facts and reasons, the Panel therefore determines that the disputed domain name was registered and is being used in bad faith, and that the Complainant has satisfied the condition set out in 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 disputed domain name <lorealll.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: April 8, 2022