

## ADMINISTRATIVE PANEL DECISION

Laboratoires M&L and L'Occitane International (Suisse) SA v. emile Roubiot, rhloccitane

Case No. D2023-4199

### 1. The Parties

The Complainant is Laboratoires M&L, France and L'Occitane International (Suisse) SA, Switzerland, represented by Wilhelm Gilliéron Attorney Corp., Switzerland.

The Respondent is Emile Roubiot, rhloccitane, France.

### 2. The Domain Name and Registrar

The Disputed Domain Name <rhloccitane.com> is registered with Squarespace Domains II LLC (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on October 10, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 2023, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 2023, 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 October 16, 2023.

On October 13, 2023, the Center informed the parties in French and English, that the language of the registration agreement for the disputed domain name is French. On October 16, 2023, the Complainant confirmed its request that English 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 of the Complaint in both English and French, and the proceedings commenced on October 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 14, 2023.

The Center appointed Mireille Buydens as the sole panelist in this matter on November 28, 2023. 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 Complainants in this proceeding are on one hand Laboratoires M&L, a company affiliated to the L'Occitane Group, which holds the Group's trademark portfolio, and, on the other hand, L'Occitane International S.A., also affiliated to the L'Occitane Group, which holds and handles the Group's domain name portfolio.

L'Occitane Group is a global, natural and organic ingredient-based cosmetics and well-being product manufacturer and retailer. Active in all continents, as of March 31, 2022, L'Occitane Group had 3,038 retail locations and 1,490 stores operated directly by the Group; at the same date, the Group had 9,042 employees.

Laboratoires M&L, i.e. the "first Complainant", is the owner of different verbal trademark registrations for the trademark L'OCCITANE ("the Trademark"):

- The International trademark registration No. 1006051, registered on October 8, 2008, with priority on April 10, 2008, covering goods and services in classes 9, 14, 18, 24, 25, 28, 30, 35, 43 and 44;
- The International trademark registration No. 579875, registered on November 5, 1991, with priority on May 29, 1991, covering goods in classes 3, 4, 5, 16 and 21;
- The International trademark registration No. 1330027, registered on June 28, 2016, with priority on June 10, 2016, covering goods and services in classes 4, 16, 18, 25, 43 and 44;
- The French trademark registration No. 1458078, registered on September 9, 1988, for goods in class 3 (cosmetic products);

L'Occitane International S.A., i.e. the "second Complainant", is the holder of the several domain names, including <loccitane.com> which was registered on April 7, 1997. This domain name has been declined in several geographical versions with third level domains, such as: <fr.loccitane.com>, <de.loccitane.com>, <jp.loccitane.com> and <ch.loccitane.com>, all of which consist of the same website translated in the respective language of the country concerned to which the Internet user is automatically redirected depending on its location.

The Respondent registered the Disputed Domain Name on September 12, 2023. The Disputed Domain Name is passively held. At the date of this decision, the Panel found that the Disputed Domain Name directs to a page mentioning "this site can't be reached".

The Panel notes that the Registrar of the Disputed Domain Name mentions as address of the Respondent: "Av. Saint-Maurice, Zone Industrielle, Manosque, France". This address is almost the same as the first Complainant's official address (Zone industrielle Saint-Maurice, Manosque, France).

## 5. Parties' Contentions

### A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

First, the Complainants assert that the first Complainant owns registrations for the Trademark. The Complainants consider that the Disputed Domain Name is confusingly similar to the first Complainant's Trademark. The Disputed Domain Name includes the first Complainant's Trademark with the addition of two letters "rh", which are the common abbreviation for "ressources humaines" (human resources) in French.

Second, the Complainants assert that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent is not commonly known under the Disputed Domain Name. The Respondent does not have any trademark rights to the term "L'OCCITANE", neither has the Respondent received any license from the Complainants to use a domain name featuring the Trademark. The Complainants submit that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

Third, the Complainants assert that the Disputed Domain Name was registered and is being used in bad faith. The Complainants submit that the first Complainant's Trademark (which predates the registration of the Disputed Domain Name) is so well-known worldwide that it is inconceivable that the Respondent ignored the Complainant and its earlier rights. The Complainants submit that the conditions referred to in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.3 are met: the passive holding of the Disputed Domain Name amounts to a use in bad faith because (i) the Trademark is well-known, (2) the Respondent did not submit a response, (3) the Respondent concealed its identity by using a privacy shield service and (4) one cannot see any plausible good faith use of the Disputed Domain Name, taking into account the well-known character of the Trademark.

### B. Respondent

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

## 6. Discussion and Findings

### Language of the Proceedings

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

In the present case, the Registrar confirmed that the language of the Registration Agreement for the Disputed Domain Name is French. The Complaint was however filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Respondent concealed its identity, making it impossible for the Complainant to find out that it could potentially be a French speaker. The Complainant also submits that, to the best of its knowledge, it was of the opinion that the registration agreement was in English as the original version of such agreement is in English and provides that "this DRA was originally written in English".

The Respondent did not make any specific submissions with respect to the language of the proceeding and did not react to the emails sent by the Center in the framework of this proceeding.

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include notably cases where the script of the domain name is the same as that of the complainant's mark and unwarranted delay in ordering the complainant to translate the complaint. The lack of reaction of the respondent after having been given a fair chance to comment is particularly relevant.

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 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.

### **Policy Requirements**

Dealing with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (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.

#### **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.

Based on the available record, the Panel finds the Complainants have shown rights in respect of a trademark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.2.1.)

The Panel finds the entirety of the Trademark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the Trademark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.7.)

Although the addition of other letters, here the letters "rh" (French common abbreviation for "ressources humaines"), may bear on assessment of the second and third elements, the Panel finds the addition of such letters does not prevent a finding of confusing similarity between the Disputed Domain Name and the Trademark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.8.).

The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and does not prevent the Disputed Domain Name from being confusingly similar to the Trademark ([WIPO Overview 3.0](#), section 1.11.1).

Based on the available record, 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 Complainants have 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 is not licensed by or affiliated with the Complainants in any way. There is no evidence that the Respondent would be commonly known under the Disputed Domain Name, nor is there any evidence of use or demonstrable plans to use the Disputed Domain Name for a *bona fide* offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the Disputed Domain Name, either.

The Panel notes that the composition of the Disputed Domain Name carries a risk of implied affiliation with the Complainants (see [WIPO Overview 3.0](#), section 2.5.1). The composition of the Disputed Domain Names, adding the letters “rh” (common abbreviation for “ressources humaines” in French) to the Complainant’s Trademark along with the gTLD “.com”, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the Disputed Domain Name and the first Complainant’s Trademark. This confirms that there is no use, nor preparations to use, of the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

Based on the available record, 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, given that the Disputed Domain Name incorporates the first Complainant’s well-known Trademark which predates the registration of the Disputed Domain Name, with the addition of the letters “rh” (French common abbreviation for “ressources humaines”), the Respondent was more likely than not aware of the first Complainant’s Trademark at the time of the registration of the Disputed Domain Name ([WIPO Overview 3.0](#) section 3.1.4). The Respondent has sought to create a misleading impression of association with the Complainants.

The Panel also notes that the Complainants’ main activity is carried out in France since many years, where the Respondent seems to be located. This confirms that it is likely that the Respondent was aware of the Complainants’ use of the Trademark.

Besides, the Panel notes that the Respondent has mentioned an address to the Registrar which is almost identical to the first Complainant's address, which could at least casts doubts as to the authenticity of such address.

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. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the first Complainant's Trademark and the composition of the Disputed Domain Name, the failure of the Respondent to submit a response and the Respondent's concealing its identity. The Panel 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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Names constitutes bad faith under the Policy.

Based on the available record, 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 <rhloccitane.com> be transferred to the second Complainant.

*/Mireille Buydens/*

**Mireille Buydens**

Sole Panelist

Date: December 7, 2023