

## **ADMINISTRATIVE PANEL DECISION**

Elemis USA, Inc. v. domain admin

Case No. D2023-4596

### **1. The Parties**

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

The Respondent is domain admin, United States.

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

The disputed domain names <eelemis.com> and <elemiis.com> are registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 6, 2023. On November 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 amendment to the Complaint on November 17, 2023.

The Center verified that the Complaint together with the amendment to the 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 November 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 26, 2023.

The Center appointed Carol Anne Been as the sole panelist in this matter on January 3, 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**

According to the Complaint, the Complainant is Elemis USA, Inc., part of the L'Occitane group of companies. The Complainant was founded in 1989 and manufactures and distributes skincare products, spa treatments, supplements, and more. The Complainant's products are sold in more than 20 countries on all continents, including the United States.

The Complainant owns many trademark registrations around the world for the mark ELEMIS for skin care products, cosmetics, and related products and services, including United States Registration No. 6936670, registered December 27, 2022. The trademark registration date in the United States was prior to the date the Respondent registered the disputed domain names.

The Complainant is also the owner of domain names which incorporate the ELEMIS mark, including <elemis.com> which was registered in 1997.

The whois records for the disputed domain names <eelemis.com> and <elemiis.com> show both disputed domain names were registered on April 11, 2023. The information obtained from the Registrar in its verification response to the Center show the Registrant's first name as "domain" and last name as "admin", located in the United States.

At the time of filing the Complaint, the Complaint alleges that the screen resolves to a security notification alerting the user that the site is infected with illegal content, and that the user's computer risks infection with viruses. Thus, the sites appeared to be associated with the distribution of malware. The Complainant also mentioned that the disputed domain names have previously resolved to parked pages displaying Pay-Per-Click ("PPC") links related to cosmetic products.

#### **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 names.

Notably, the Complainant contends that its registered trademark is clearly recognizable within the disputed domain names, and that malware on the sites at the disputed domain names shows the Respondent has no rights or legitimate interests with respect to the disputed domain names, and that the disputed domain names were registered and are being used in bad faith.

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

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

#### **6. Discussion and Findings**

To succeed on its claim, the Complainant must demonstrate that the three elements delineated in paragraph 4(a) of the Policy have been satisfied:

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

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. As shown by the full whois records obtained from the Registrar, the same domain name holder, the Respondent, is listed for both disputed domain names.

### **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.

Based on the available record, the Panel finds 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 Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Here, the disputed domain names <eelemis.com> and <elemiis.com> are intentional misspellings of the Complainant's mark ELEMIS by repeating "e" in the former, and "i" in the latter. A domain name which consists of common, obvious, or intentional misspellings of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

The practice of deliberately adding, deleting, substituting, or reversing the order of letters in an existing mark has been considered *typosquatting*, and numerous panels have found a contested domain name to be confusingly similar under these circumstances. See, e.g., *Groupe ADEO v. Privacy Service Provided by Withheld for Privacy ehf / Ivan Urgant*, WIPO Case No. [D2022-0828](#).

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.

While a respondent's default, or failure to submit a formal response, in itself does not necessarily constitute an admission that the complainant's claims are true, where an explanation is called for but not forthcoming,

or where there are no other plausible conclusions apparent, panels have been prepared to draw certain inferences against the respondent. See [WIPO Overview 3.0](#), section 4.3.

In this action, the Respondent has failed to respond despite the apparent need for an explanation.

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 names. 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 names such as those enumerated in the Policy or otherwise.

Furthermore, Panels have held that the use of a domain name for illegal activity, including for distribution of malware as asserted here, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

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.

The Respondent appears to have "intentionally attempted to attract, for commercial gain, Internet users to its web site or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or of a product or service on [its] web site or location". Policy, paragraph 4(b)(iv). The fact that the Respondent engaged in a practice of typosquatting and that the disputed domain names have resolved to PPC pages including links related to the Complainant's business, reinforces the Panel's view that the Respondent registered the disputed domain names and is using them for its own commercial benefit. The Respondent failed to respond to the Complaint to provide an explanation for its use of the disputed domain names other than bad faith.

Panels have held that the use of a domain name for illegal activity, including for distribution of malware as asserted here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. 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 names <eelemis.com> and <elemiis.com> be transferred to the Complainant.

/Carol Anne Been/

**Carol Anne Been**

Sole Panelist

Date: January 17, 2024