

ADMINISTRATIVE PANEL DECISION

Clarins v. zheng jie
Case No. D2024-0352

1. The Parties

The Complainant is Clarins, France, represented by Tmark Conseils, France.

The Respondent is zheng jie, China.

2. The Domain Name and Registrar

The disputed domain name <fr-clarins.shop> (the “Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 27, 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 (Identity undisclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 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 January 30, 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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2024.

The Center appointed Jonas Gulliksson as the sole panelist in this matter on March 5, 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 acts within the field of cosmetics and make-up products. The Complainant is the proprietor of, i.a., the following trademark registrations:

- French trademark registration no. 1637194 CLARINS, registered on June 14, 1991;
- European Union trademark registration no. 005394283 CLARINS, registered on October 5, 2010;
- United Kingdom trademark registration no. UK00905394283 CLARINS, registered on October 5, 2010;
- Canadian trademark registration no. TMA645123 CLARINS, registered on July 29, 2005;
- United States of America trademark registration no. 1574179 CLARINS, registered on January 2, 1990;
- United States of America trademark registration no. 935002 CLARINS, registered on May 30, 1972; and
- Thai trademark registration no. Kor76352 CLARINS, registered on March 24, 1988.

Further, "Clarins" constitutes the registered company name of the Complainant. The Complainant also owns the domain names <clarins.fr> registered on August 19, 1996, and <clarinsusa.com>, registered on November 11, 1997.

The Domain Name was registered on January 5, 2024. At the time the Complaint was filed, the Domain Name was a copycat version of the Complainant's website. The Domain Name currently resolves to a blank website.

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 Domain Name.

Notably, the Complainant contends that:

- The Domain Name is confusingly similar to a trademark in which the Complainant has rights.
- The Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not affiliated in any manner with the Complainant and has never been authorized to use or register CLARINS, including as a domain name. Furthermore, the Respondent is not making a fair use of the Domain Name, since it is used in relation to a website (the "Domain Name Website") which is unauthorized, offering infringing CLARINS' cosmetic products under the Complainant's trademark and which is a clear knock-off version of the Complainant's official website. The CLARINS trademark is used prominently on the Domain Name Website. By reproducing the Complainant's well-known trademark and imitating the official website of the Complainant, the Domain Name carries a risk of implied affiliation. The Respondent clearly misleads consumers and diverts them from the real and official website of the Complainant in order to create commercial gain for himself. Such use cannot and does not constitute bona fide commercial use sufficient to legitimize any rights and interests that the Respondent might have in the Domain Name. This is especially true considering that the Complainant has been using its CLARINS trademark intensively for more than sixty years and the trademark is well-known in the cosmetic industry.

- The Domain Name was registered and is being used in bad faith. The Respondent obviously knew about the prior rights and wide use of CLARINS by the Complainant. It is also worth noting that the Respondent took steps to cover his identity, which raises suspicions on his real intentions. Indeed, if the Respondent had a genuine use of the Domain Name, he wouldn't have hidden his identity. The circumstances surrounding this matter clearly indicate that the Domain Name is being used in bad faith by the Respondent, primarily for the purpose of creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship and affiliation of the Domain Name Website. The Respondent is exploiting the Complainant's trademark in order to harvest usernames and passwords of consumers and gain "click through" commissions from the diversion of Internet users, which is a common example of registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

- (i) that the 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 Domain Name; and
- (iii) that the 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 Domain Name, see 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 the CLARINS trademark for the purposes of the Policy.

The entirety of the Complainant's CLARINS trademark is reproduced within the Domain Name. Although the addition of other terms, here, "fr-" and the generic Top-Level Domain ("gTLD") ".shop", may bear on assessment of the second and third elements, the Panel finds that the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trademark for the purposes of the Policy, see [WIPO Overview 3.0](#), section 1.8. Accordingly, the Domain Name is confusingly similar to the Complainant's CLARINS trademark for the purposes of the Policy.

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, see [WIPO Overview 3.0](#), section 2.1.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent, see [WIPO Overview 3.0](#), section 2.13.1.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

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 that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Circumstances relevant in this regard are, *i.a.*, that the Respondent, by using the Domain Name, intentionally has attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Complainant's rights to the CLARINS trademark were obtained well before the Respondent's registration of the Domain Name. As mentioned above, the Domain Name reproduces the Complainant's CLARINS trademark in its entirety. The use of the gTLD ".shop" in combination with CLARINS in the Domain Name clearly indicates that products under the trademark CLARINS are sold on the Domain Name Website. The Complainant has not authorized the Respondent to use its CLARINS mark. The content of the Domain Name Website clearly reflects the Respondent's awareness of and intent to target the Complainant. The content of the Domain Name Website seemingly offering the Complainant's products on a copycat version of the Complainant's website indicates that the Respondent intentionally has tried to attract, for commercial gain, Internet users to the Domain Name Website by creating a likelihood of confusion with the Complainant's CLARINS trademark as to the source, sponsorship, affiliation, or endorsement of the Domain Name Website and the products supposedly offered on such website. Furthermore, the fact that the Domain Name currently resolves to a website that is not being used does not prevent a finding of bad faith in this case. See [WIPO Overview 3.0](#), section 3.3.

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 Domain Name <fr-clarins.shop> be transferred to the Complainant.

/Jonas Gulliksson/

Jonas Gulliksson

Sole Panelist

Date: March 20, 2024