

ADMINISTRATIVE PANEL DECISION

L'Oréal v. Contact Privacy Inc. Customer 0162054645 / La frappe AZZARO,
La frappe cbd
Case No. D2022-2267

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 0162054645, Canada / La frappe AZZARO, La frappe cbd, France.

2. The Domain Name and Registrar

The disputed domain name <lafrappecbd-by-azzaro.com> (the "Domain Name") is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 22, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 29, 2022.

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

The Center appointed Vincent Denoyelle as the sole panelist in this matter on July 27, 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 following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a French headquartered group of companies specialized in the fields of cosmetics and beauty.

The Complainant is the owner of several trade marks for AZZARO including the following:

- International Trade Mark Registration AZZARO No. 781687 registered on April 12, 2002 covering goods in classes 9, 14 and 18.

The Complainant is also the owner of several domain names reflecting its trade marks including <azzaro.com> which the Complainant registered in 1999.

The Domain Name was registered on July 5, 2021 and does not currently resolve to an active website and used to point to a webpage under construction inviting Internet users to provide their email address in order to receive updates about the website associated with the Domain Name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the AZZARO trade mark in which the Complainant has rights as the Domain Name incorporates the entire AZZARO trade mark with the addition of "lafραπεcbd-by-" before the Complainant's trade mark in the Domain Name. The Complainant argues that the dominant element of the Domain Name is its AZZARO trade mark and that such addition to the Domain Name does not prevent the likelihood of confusion between the Domain Name and the Complainant's AZZARO trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant states that the Respondent is neither affiliated with the Complainant in any way nor has the Respondent been licensed or authorized by the Complainant to use and register its trade mark, or to seek registration of any domain name incorporating its trade mark. The Complainant contends that the Respondent is not commonly known by the Domain Name or the name "azzaro". Then the Complainant points to the way in which the Domain Name was used both in terms of associated website and DNS setup of the Domain Name (with active MX records) to conclude that (i) the Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services and (ii) the Respondent cannot claim that it is making a legitimate non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark of the Complainant. Finally, the Complainant submits that in light of the well-known nature of the Complainant's AZZARO trade mark, no actual or contemplated *bona fide* or legitimate use of the Domain Name could reasonably be claimed.

The Complainant contends that the Respondent has registered the Domain Name with full knowledge of the Complainant's trade mark and the Respondent could not plausibly have ignored the reputation of the Complainant's trade mark AZZARO as it is well-known. The Complainant also alleges that the Respondent

is using the Domain Name in bad faith. The Complainant submits that in the absence of any license or permission from the Complainant to use its well-known trade mark, no actual or contemplated *bona fide* or legitimate use of the Domain Name could reasonably be claimed. The Complainant also argues that it is more likely than not, that Respondent's primary motive in registering and using the Domain Name was to capitalize on or otherwise take advantage of the Complainant's AZZARO trade mark, through the creation of initial interest confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website. The Complainant contends that the use of the Domain Name where the AZZARO trade mark of the Complainant is associated with a substance which the Complainant claims is illegal or perceived as such, tarnishes the Complainant's trade mark. The Complainant also infers from the fact that the Domain Name has been set up to allow the sending of emails, a malevolent intention on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in AZZARO, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark AZZARO in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's AZZARO trade mark in its entirety preceded by the terms "lafrappecbd-by-". The Panel finds that the AZZARO trade mark of the Complainant is instantly recognizable in the Domain Name especially as it is reproduced identically and separated from the other terms by a hyphen. The Panel finds that the terms placed before the AZZARO trade mark do not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name.

Then there is the addition of the generic Top-Level-Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically

disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it does not know the Respondent and that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark AZZARO. There is no indication that the Respondent is commonly known by the Domain Name.

The previous minimal use of the Domain Name to direct to a webpage under construction and inviting Internet users to volunteer their email address offers no indication as to how the Respondent could possibly substantiate any actual or contemplated *bona fide* or legitimate use of the Domain Name.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety in combination with additional terms, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#). The Panel finds that this is especially the case when the trade mark of the Complainant is preceded by the preposition "by".

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the

complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line 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.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact AZZARO trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the goodwill and reputation of the Complainant's AZZARO trade mark, (ii) the fact that the Respondent appears to be based in France where the Complainant is headquartered, (iii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade mark AZZARO, (iv) the fact that the AZZARO trade mark in the Domain Name is preceded by the preposition "by" and a hyphen which places an emphasis on the AZZARO trade mark, and (v) the fact that the Respondent used privacy protection services to register the Domain Name and that the underlying details of the Respondent disclosed by the Registrar do not appear to be accurate as suggested by the delivery service provider used by the Center.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The Domain Name appears to be passively held at the time of the Decision and it used to direct to a webpage under construction and inviting Internet users to volunteer their email address. Passive use itself would not cure the Respondent's bad faith given the overall circumstances here, specifically the reputation of the Complainant's AZZARO trade mark, especially in the country where the Respondent appears to be based and the Respondent's default.

In addition, when considering the past use of the Domain Name and the DNS setup of the Domain Name (with active MX records), the Panel comes to the conclusion that (i) such use does not provide any indication as to how the Respondent could possibly be seen as using the Domain Name other than in bad faith, and further that (ii) an inference of bad faith can be drawn from the fact that the website associated with the Domain Name was designed to allow the collection of personal data (including email addresses) from Internet users potentially in an effort to use such data illegitimately or fraudulently. In these circumstances, the Domain Name could constitute a potential threat hanging over the head of the Complainant and its consumers.

Finally, the fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

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 <lafrappecbd-by-azzaro.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: August 10, 2022