

## **ADMINISTRATIVE PANEL DECISION**

Europe Watch Group II B.V. v. Amanda Gorman  
Case No. D2022-3233

### **1. The Parties**

The Complainant is Europe Watch Group II B.V., Netherlands, represented by Bardehle Pagenberg, France.

The Respondent is / Amanda Gorman, United States of America (“United States”).

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

The disputed domain names <cluse-montre.shop> and <montre-clus.shop> are registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 1, 2022, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 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 amendment to the Complaint on September 2, 2022.

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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022. The Respondent sent an informal communication to the Center on October 10, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on October 24, 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 designs, manufactures and markets fashion watches for men and women under the CLUSE trademark, operating the <cluse.com> domain name which is available in English, French, German, Dutch, and Japanese.

The Complainant is the owner of, amongst others, the European Union Trademark Registration No. 015833858 for the word mark CLUSE, filed on September 15, 2016, and registered on January 25, 2017, in class 14 (Annexes 5 and 6 to the Complaint).

The disputed domain names, <cluse-montre.shop> and <montre-clus.shop> were registered on May 27, 2022, and May 13, 2022, respectively and have been used in connection with online shops reproducing the Complainant's trademark and official website's look-and-feel in connection with the offer for sale of watches to the French-speaking public. The Complainant received complaints from consumers that have placed orders on such shops and have not received delivery of the products or reimbursement of the payments (Annex 9 to the Complaint).

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts to design, manufacture and market fashion watches for men and women under the CLUSE trademark, being its watches sold throughout the world with a considerable commercial success.

According to the Complainant the disputed domain names are confusingly similar to the CLUSE trademark, being "montre" the French term for "watch", thus being the disputed domain names purely descriptive with respect to the goods for which the Complainant's earlier trademark is registered and used, as well as in connection with the goods being sold at the disputed domain names.

As to the absence of rights or legitimate interests, the Complainant submits that:

- i. nothing suggests that the Respondent has been commonly known by the name "cluse" prior to or after the registration of the disputed domain names; not owning the Respondent any trademark for CLUSE nor being the Respondent a licensee of the Complainant or an authorized dealer of the CLUSE products;
- ii. the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names given that the disputed domain names resolve to websites that characterize an imitation of the Complainant's own website and where goods that are not manufactured or authorized by the Complainant are being offered; and
- iii. the Respondent is not making a *bona fide* offering of goods or services, given that the Complainant has received numerous complaints about the two websites to which the disputed domain names resolve from consumers who have placed orders on said websites and received neither delivery of any product nor reimbursement of their payments.

As to bad faith registration of the disputed domain names the Complainant submits that the Respondent had actual knowledge of the Complainant's well-known mark, given that the websites to which the disputed domain names resolve precisely imitate the Complainant's website and reproduce images of the

Complainant's products. In addition to that, the Respondent has been using the disputed domain names to defraud online consumers, leading them into believing that they are visiting the Complainant's website and inducing them to place orders for products, which are then never delivered.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. The Respondent sent an informal communication to the Center on October 10, 2022, excusing for placing products not approved and stating that such had been "removed from the shelves".

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain names.

### **A. Identical or Confusingly Similar**

The Complainant has established rights in the CLUSE trademark.

The Panel finds that the disputed domain names <cluse-montre.shop> and <montre-clus.shop> are confusingly similar to the Complainant's trademark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Moreover, the addition of the French term "montre" (watch, in English) does not prevent a finding of confusing similarity.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. The first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain names, even if it has not acquired trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to the evidence submitted, the Respondent has used both of the disputed domain names to intentionally mislead and confuse the public into believing that there might be some connection or affiliation with the Complainant given the reproduction of: (i) the Complainant's trademark, (ii) look-an-feel of the Complainant's official website and (iii) of images of the Complainant's products.

The Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain names.

### **C. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of disputed domain names, where, by using the disputed domain names, the Respondent has intentionally 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 website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain names in bad faith can be found in view of the use of the disputed domain names seeking to create a direct affiliation with the Complainant and its business, as seen above.

Other factors that corroborate the Panel's finding of bad faith of the Respondent are:

- a. the choice to retain a privacy protection service to conceal the Respondent's identity; and
- b. the absence of a formal Response by the Respondent.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names pursuant to paragraph 4(b)(iv) 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 <cluse-montre.shop> and <montre-clus.shop> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: November 7, 2022