

## **ADMINISTRATIVE PANEL DECISION**

### Laboratoires Vivacy v. JUNGYUHKOOK

### Case No. D2022-3364

#### **1. The Parties**

The Complainant is Laboratoires Vivacy, France, represented by Inlex IP Expertise, France.

The Respondent is JUNGYUHKOOK, Republic of Korea.

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

The disputed domain name <stylage.com> is registered with Megazone Corp., dba HOSTING.KR (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 9, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 13, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On September 19, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On September 20, 2022, the Complainant filed an amended Complaint requesting for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 in English and Korean of the Complaint, and the proceedings commenced on September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 21, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on November 2, 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 is a French manufacturer of cosmetic injectable medical fillers sold under the trademark STYLAGE. The Complainant has a number of STYLAGE trademark registrations including International Trademark Registration Number 969975 registered on June 19, 2008, International Trademark Registration Number 1258327 registered on May 18, 2015, and European Union Trademark Registration Number 007002132 registered on March 23, 2009.

The Respondent appears to be an individual with an address in the Republic of Korea.

The disputed domain name was registered on May 30, 2017, and resolves to a website with no content.

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

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

The Complainant contends that the disputed domain name is identical to the STYLAGE trademark in which the Complainant has rights.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant further contends that the disputed domain name is not in use and has never been in use in connection with a legitimate non-commercial or fair use, nor with a *bona fide* offering of goods and services.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant contends that the STYLAGE mark is a coined term and the Respondent would have no reasonable explanation for choosing this name. Further, the Complainant states that the Respondent attempted to sell the disputed domain name for USD 80,000 which is well in excess of his out-of-pocket costs directly related to the disputed domain name, which shows that the Respondent registered the disputed domain name in order to create confusion for Internet users and to resell it for valuable consideration in excess of his out of pocket costs directly related to the disputed domain name. In addition, the Complainant explains that the Respondent has been involved in numerous prior domain name cases and holds more than 80,000 domain names including domain names with well-known trademarks. Lastly, the Complainant contends that the disputed domain name disrupts the Complainant's business and causes harm to the Complainant's brand image.

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

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

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

##### **A. Language of Proceedings**

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and

English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent subsequently chose not to submit any response.

Given the fact that the Complainant is based in France and the Respondent is based in the Republic of Korea, English would appear to be the fairest neutral language for rendering this decision. Further, the disputed domain name is composed of Latin characters. Besides, both Parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. In addition, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1, the Panel can take into consideration prior cases involving the respondent in a particular language. In this regard, there are five prior WIPO UDRP decisions involving a respondent in the Republic of Korea by the name of “JUNGYUHKOOK”, and the panels in all the cases rendered decisions in English, deciding that the respondent has sufficient knowledge of English to be able to understand the decision in English, or that he would not be unduly prejudiced by rendering the decision in English. Accordingly, the Panel determines that rendering the decision in English is fair and procedurally efficient, given the circumstances of this case.

### **B. Identical or Confusingly Similar**

The Complainant owns trademark registrations for the term STYLAGE. The disputed domain name solely consists of the term “stylage”, and is therefore, identical to the Complainant’s trademark.

For the reason mentioned above, the Panel finds that the first element has been established.

### **C. Rights or Legitimate Interests**

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* basis has been established, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. However, the Respondent in this case has chosen to file no response to these assertions by the Complainant, and there is no evidence or allegation in the records that would warrant a finding in favor of the Respondent on this point. For instance, the disputed domain name is inactive, thus there can be no *bona fide* offering establishing rights or legitimate interests. Moreover, the disputed domain name is identical to the Complainant’s trademark, thus carrying a high risk of implied affiliation to the Complainant, contrary to the fact, which cannot establish fair use.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

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

The Panel finds that there is sufficient evidence to find bad faith in this case.

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is “broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark.” Here, evidence suggests that the Respondent likely knew of the Complainant when registering the disputed domain name. First of all, “stylage” is a distinctive term, and the Respondent has given no explanation for having registered this particular term. Further, the Panel’s Google search for “stylage” for the five-year period preceding registration of the disputed domain name showed plenty of results in connection with the Respondent and the “stylage” injections. Besides, the Complainant’s trademark registrations would have been discoverable through a trademark search. Therefore, the Panel finds that the Respondent more likely than not registered the disputed domain name with knowledge of the Complainant and its trademark in order to profit from the likelihood of association with the Complainant’s trademark and the products using the mark.

The disputed domain name does not display any content and there no evidence it has ever been used, but from the inception of the UDRP, UDRP panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. Considering the distinctiveness of the STYLAGE mark, the Respondent's pre-Complaint correspondence with the Complainant wherein the Respondent offered the disputed domain name for sale for USD 80,000 that is likely well in excess of the out-of-pocket expenses incurred by the Respondent when registering and maintaining the disputed domain name, and the failure of the Respondent to submit a response or provide any evidence of actual or contemplated good-faith use, the Panel finds that the Respondent's non-use of the disputed domain name does not prevent a finding of bad faith.

Lastly, the Panel takes note of the various prior UDRP decisions rendered against the Respondent that indicate a pattern of bad faith conduct on part of the Respondent, *e.g.*, *Fundación Universitaria Iberoamericana (Funiber) v. Jungyuhkook*, WIPO Case No. [D2019-2743](#); *Enel S.p.A v. Jungyuhkook*, WIPO Case No. [D2021-3976](#).

Accordingly, the Panel finds that the third element has been established.

## 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 <stylage.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: November 17, 2022