

## **ADMINISTRATIVE PANEL DECISION**

La Roche-Posay Laboratoire Pharmaceutique v. Derek Broman  
Case No. DME2022-0022

### **1. The Parties**

The Complainant is La Roche-Posay Laboratoire Pharmaceutique, France, represented by Dreyfus & associés, France.

The Respondent is Derek Broman, United States of America.

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

The disputed domain name <larocheposay.me> (the “Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 20, 2022. On October 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 20, 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 October 21, 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 October 25, 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on December 6, 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 company specialized in the field of cosmetics and beauty. It is particularly known for its dermatological skincare products.

The Complainant is the owner of numerous LA ROCHE-POSAY trademark registrations, including:

- the International Trademark Registration LA ROCHE-POSAY No. 787605 registered on July 12, 2002;
- the International Trademark Registration LA ROCHE-POSAY No. 1533143 registered on April 24, 2020; and
- the European Union Trademark Registration LA ROCHE-POSAY No. 018217417 registered on July 16, 2020.

The Complainant is also the owner of the domain name <laroche-posay.com> which constitutes its official domain name.

The Domain Name was registered on August 08, 2022.

As of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has resolved to a domain marketplace where it has been offered for sale.

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

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

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

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

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

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

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the 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 in the Domain Name; and

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

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

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

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid LA ROCHE-POSAY trademark registrations. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The Domain Name omits the hyphen between “roche” and “posay”. It is well established that use or absence of punctuation marks, such as hyphens, does not alter the fact that a trademark is recognizable within the disputed domain name. See *Six Continents Hotels, Inc. v. Helen Siew*, WIPO Case No. [D2004-0656](#).

The country code Top-Level Domain (“ccTLD”) “.me” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is almost identical to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

(i) that it has used or made 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 prior to the dispute; or

(ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or

(iii) that it is making a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s LA ROCHE-POSAY trademark registrations predate the Respondent’s registration of the Domain Name. There is no evidence in

the case record that the Complainant has licensed or otherwise permitted the Respondent to use the LA ROCHE-POSAY trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain. On the contrary, the Domain Name resolves to the domain marketplace where it is offered for sale. Thus, the Respondent intends to utilize the Domain Name to sell it for profit. Such use of the Domain Name does not confer rights or legitimate interests on the Respondent. Moreover, given that the only difference between the Complainant's trademark and the disputed domain name is the omitted hyphen, the disputed domain name should be considered an example of typosquatting, which in of itself is demonstrative of a respondent's lack of rights or legitimate interests.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the LA ROCHE-POSAY trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name, as it has been proven to the Panel's satisfaction that the Complainant's LA ROCHE-POSAY trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products under this trademark, particularly given the nearly identical disputed domain name. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's LA ROCHE-POSAY trademark.

Moreover, the Respondent's use of a privacy service that concealed registrant information is a further evidence of bad faith.

Finally, the Domain Name resolves to a domain marketplace where it is offered for sale. The Panel considers that the Respondent's intent to sell the Domain Name evinces the bad faith use.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 <larocheposay.me> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: December 20, 2022