

## **ADMINISTRATIVE PANEL DECISION**

Yves Saint Laurent Parfums v. Zhao Ke

Case No. DNL2022-0020

### **1. The Parties**

Complainant is Yves Saint Laurent Parfums, France, represented by Dreyfus & associés, France.

Respondent is Zhao Ke, China.

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

The disputed domain name <yslbeauty.nl> (the “Domain Name”) is registered with SIDN through 1API GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2022. On April 12, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On April 13, 2022, SIDN 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 Complainant on April 21, 2022, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on April 26, 2022.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Regulations, article 7.1, the due date for Response was May 18, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 19, 2022.

The Center appointed Remco M.R. van Leeuwen as the panelist in this matter on June 2, 2022. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

#### 4. Factual Background

The Yves Saint Laurent fashion house was founded in 1961 and is one of the world's most prominent fashion houses. It expanded in the 1980s and early 1990s with fragrances for both men and women. Yves Saint Laurent's cosmetic line was launched in 1978 and its first fragrance in 1964, and several fragrances since then.

Complainant operates the domain names <yslbeauty.com> and <yslbeautyus.com> (both registered on February 20, 2007) to promote its goods and services.

Furthermore, Complainant is the proprietor of several YSL trademark registrations, including European Union Trade Mark registration for the word mark YSL, registered on October 6, 2006, with registration number 004672358, and European Union Trade Mark registration for the word mark YVES SAINT LAURENT, registered on May 22, 2008, with registration number 006036289, both for goods in class 3 (collectively the "Trademark").

The Domain Name was registered on November 26, 2014. Complainant has submitted evidence that at the time the Complaint was filed, the Domain Name was resolving to a parking page displaying pay-per-click sponsored links related to cosmetic and makeup products, also stating "the domain yslbeauty.nl may be for sale by its owner!". At the time of the Decision the Domain Name is not resolving to an active website.

Complainant sent a cease and desist letter to Respondent requesting to cease the use of the Domain Name and to transfer the Domain Name to Complainant. Respondent replied to Complainant and offered the Domain Name for sale for USD 4,500, followed by a reduced offer of USD 3,999.

#### 5. Parties' Contentions

##### A. Complainant

Insofar as relevant, Complainant contends the following.

Complainant states that it has rights in the Trademark and that the Domain Name is confusingly similar to the Trademark for the following reasons. The Domain Name incorporates the Trademark in its entirety. Furthermore, it differs only by the extension ".nl" from Complainant's domain name <yslbeauty.com>. In many WIPO UDRP<sup>1</sup> decisions, panels have considered that the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark (*Swarovski Aktiengesellschaft v. mei xudong*, WIPO Case No. [D2013-0150](#); *RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#)). The addition of the term "beauty" does not allow to dispel such likelihood of confusion.

Complainant contends that Respondent has no rights to or legitimate interests in the Domain Name for the following reasons. Respondent is not affiliated with Complainant in any way nor has it been authorized by Complainant to use and register the Trademark, or to seek registration of any domain name incorporating the Trademark. Furthermore, Respondent has no prior rights or legitimate interests in the Domain Name. The Domain Name is so confusingly similar to the Trademark, that Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the Domain Name. It appears that the only reason why Respondent has registered the Domain Name is for the purpose of selling it to Complainant for a high price and in excess of the out-of-pocket expenses.

Finally, Complainant alleges that the Domain Name has been registered or is being used in bad faith for the following reasons. As Complainant is well-known throughout the world, it is implausible that Respondent was unaware of Complainant when it registered the Domain Name. It is very likely that Respondent registered

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<sup>1</sup> Uniform Domain Name Dispute Resolution Policy

the Domain Name in order to sell it to Complainant for financial gain. Moreover, Respondent was not and is not using, or has not made demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Domain Name resolved to a parking page displaying commercial links related to Complainant's field of activity whereas it now directs to an inactive page. Respondent has attempted to sell the Domain Name for USD 4,500 and proposed to apply the discounted offer of USD 3,999, which is in excess of Respondent's out-of-pocket expenses in registering the Domain Name.

Complainant requests the transfer of the Domain Name.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to Respondent.

As Respondent has not filed a Response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact.

Pursuant to article 2.1 of the Regulations, Complainant's request to transfer the Domain Name must meet three cumulative conditions:

- a. the Domain Name is identical or confusingly similar to:
  - I. a trademark, or trade name, protected under Dutch law in which Complainant has rights; or
  - II. a personal name registered in the General Municipal Register ("gemeentelijke basisadministratie") of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which complainant undertakes public activities on a permanent basis; and
- b. Respondent has no rights to or legitimate interests in the Domain Name; and
- c. the Domain Name has been registered or is being used in bad faith.

Considering these conditions, the Panel rules as follows.

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

Complainant has submitted a copy of the registration of the Trademark demonstrating that Complainant is the holder of the Trademark. The Trademark is protected under Dutch law. The un rebutted evidence provided in the Complaint regarding the Trademark constitutes *prima facie* evidence that Complainant has trademark rights for purposes of the Regulations, and accordingly the Panel will review the Complaint on this basis.

Turning to whether the Domain Name is identical or confusingly similar to the Trademark, the Panel observes that the Domain Name comprises: (a) an exact reproduction of the Trademark, *i.e.* YSL; (b) the following word "beauty"; (c) the following country code Top-Level Domain ("ccTLD") ".nl".

The Panel notes that it is established ".nl" case law that the country code Top-Level Domain ".nl" may be disregarded in assessing confusing similarity between the relevant trademark on the one hand, and the

disputed domain name on the other hand (see, e.g., *Caterpillar Inc. v. H. van Zuylen Materieel*, WIPO Case No. [DNL2011-0073](#); *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. [DNL2008-0008](#)).

It is also well established that where a domain name incorporates a complainant's well-known and distinctive trademark in its entirety, it is deemed confusingly similar to that mark irrespective of the addition of a word, in this case, "beauty" (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).<sup>2</sup>

Noting precedent, the Panel accepts Complainant's contention that the addition of the non-distinctive and descriptive word "beauty" after the Trademark as an additional element does not serve to distinguish the Domain Name or prevent a finding of confusing similarity between the Trademark and the Domain Name.

Consequently, the Panel finds that the Domain Name is confusingly similar to the Trademark for purposes of the Regulations. Therefore, the first requirement of article 2.1(a)(I) of the Regulations is met.

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

Article 2.1(b) of the Regulations requires Complainant to demonstrate that Respondent has no rights to or legitimate interests in the Domain Name. This condition is met if Complainant makes out a *prima facie* case that Respondent has no such rights or legitimate interests and if Respondent fails to rebut this with appropriate allegations or evidence demonstrating rights to or legitimate interests in the Domain Name (see, e.g., *Technische Unie B.V. and Otra Information Services v. Technology Services Ltd.*, WIPO Case No. [DNL2008-0002](#)).

Complainant alleges that Respondent lacks rights to or legitimate interests in the Domain Name for the reasons set out in section 5.A above. The Panel finds that Complainant has fulfilled the obligation to establish *prima facie* that Respondent has no rights to or legitimate interests in the Domain Name. Having failed to submit a response, Respondent has not attempted to refute the arguments of Complainant to show rights or legitimate interests.

The Panel could not establish any indication that any of the circumstances as described in article 3.1 of the Regulations apply or that Respondent in any plausible other way has rights to or legitimate interests in the Domain Name.

Consequently, the Panel concludes that Complainant has met the second requirement of article 2.1(b) of the Regulations.

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

Article 2.1(c) of the Regulations requires Complainant to demonstrate that the Domain Name has been registered or is being used in bad faith. Article 3.2 of the Regulations sets out certain non-exhaustive circumstances to be deemed evidence of both of these requirements. The Panel finds that the evidence in the case shows that Respondent has registered and used the Domain Name in bad faith.

When Respondent registered the Domain Name, the Trademark had already been registered and was being used by Complainant for its products. Considering the distinctiveness and reputation of the Trademark and Complainant's prior rights, the Panel finds that Respondent in all likelihood knew, and in any event should have known Complainant's rights at the time of registration of the Domain Name. This is also indicated by the fact that Respondent registered a domain name which includes Complainant's Trademark in its entirety.

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<sup>2</sup> In view of the fact that the Regulations are to an extent based on the UDRP, it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

Furthermore, the Domain Name was used to resolve to a parking page with pay-per-click sponsored advertising links related to cosmetic and makeup products. Using the Domain Name for commercial pay-per-click advertising reflects bad faith, especially since the Domain Name includes the well-established Trademark (see section 2.5.3, of [WIPO Overview 3.0](#), and *Harpo, Inc. and Oprah's Farm, LLC v. Robert McDaniel*, WIPO Case No. [D2013-0585](#)).

Furthermore, Respondent offered to transfer the Domain Name to Complainant in return for payment of USD 4,500 and later on for USD 3,999. Coupled with Respondent's lack of rights to or legitimate interests in the Domain Name, Respondent's registration of the Domain Name for the apparent purpose of selling it to Complainant for valuable consideration in excess of Respondent's costs directly related to the Domain Name, is also indicative of bad faith on the part of Respondent in its registration of the Domain Name.

The Panel finds that the bad faith requirement of article 2.1(c) of the Regulations has been met.

## 7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Domain Name <yslbeauty.nl> be transferred to Complainant.

*/Remco M R van Leeuwen/*

**Remco M R van Leeuwen**

Panelist

Date: June 15, 2022