

ADMINISTRATIVE PANEL DECISION

L'Oréal v. nguyen van tu, van tu
Case No. D2023-0447

1. The Parties

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

The Respondent is nguyen van tu, van tu, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <cerave.site> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name.

On February 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (GMO-Z.com RUNSYSTEM JSC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 3, 2023 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 in English on February 3, 2023.

On February 3, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On February 3, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on February 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 3, 2023.

The Center appointed Teruo Kato as the sole panelist in this matter on March 9, 2023. 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

According to the Complaint, the Complainant is a French industrial group specialized in the field of cosmetics and beauty products and is one of the world's largest groups in the cosmetics business with a portfolio of 36 brands and is present in 150 countries.

Its brands include CERAVE, which offers a range of advanced skincare products, specifically cleansers, moisturizers, sunscreens, healing ointments and a dedicated baby line. According to the Complainant, CERAVE is the No. 1 dermatologist recommended moisturizer brand in the United States of America and is now available in over 40 countries worldwide.

The Complainant owns, among others, International Trademark Registration CERAVE No. 1365989 registered on June 15, 2017, designating *inter alia* Viet Nam (in which the Respondent is said to reside) and covering goods in class 3; International Trademark Registration CERAVE No. 1693411 dated June 2, 2022, designating China and United Kingdom and covering goods and services in classes 3, 9, 35 and 41; European Union Trade Mark Registration CERAVE No. 016162752 dated June 21, 2017, covering goods in class 3.

The disputed domain name was registered on December 2, 2022.

The Respondent is Nguyen Van Tu of Viet Nam.

According to the Complainant, "the disputed domain name, which entirely incorporates Complainant's trademark, resolves towards a fake website that reproduces Complainant's trademark and its visuals, offering alleged CERAVE products for sale with a discount that are most likely to be counterfeit goods".

The Complainant requests that the disputed domain name be transferred to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of the CERAVE trademark.

The Complainant also contends that the disputed domain name is confusingly similar to the Complainant's CERAVE trademark.

The Complainant further contends that the Respondent is not a licensee nor an authorized agent of the Complainant, nor in any other way authorized to use the Complainant's trademark CERAVE, and that the Respondent is not commonly known by the disputed domain name as an individual, business or other organization, and that the Respondent does not make any *bona fide* use or trade under the disputed domain name.

The Complainant also contends that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the panel to determine otherwise having regard to the circumstances of the administrative proceeding. The Panel notes that in the present case the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Complainant has filed the Complaint in English and requests that the language of the proceeding be English and contends, among others, that if Japanese were chosen, it "would lay an undue burden on Complainant" and that "since Complainant was unable to communicate in the language of the registration agreement, the proceeding would inevitably be delayed unduly, and Complainant would have to incur substantial expenses if Complainant were to submit all documents in said language".

On February 2, 2023, the Respondent was invited by the Center, in both Japanese and English, to indicate any objection to the proceeding being conducted in English by February 8, 2023. The Respondent did not respond to this by this deadline nor later.

On February 10, 2023, the Center informed the Respondent, in both Japanese and English, that the Center has decided, under the circumstances of this case, to: "1) accept the Complaint as filed in English; 2) accept a Response in either English or Japanese; 3) appoint a Panel familiar with both languages mentioned above, if available." Accordingly, the Panel would have accepted a response in Japanese, but no reply was submitted by the Respondent.

In the circumstances, in accordance with paragraph 11(a) of the Rules, the Panel decides that English be the language of the proceeding. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel must determine whether (a) the Complainant has a trademark or service mark; and (b) whether the disputed domain name is identical or confusingly similar to that trademark or service mark.

The Complainant submitted evidences of trademark registrations and the Panel is satisfied that the Complainant is the owner of, among others,

- International Trademark Registration CERAVER No. 1365989 registered on June 15, 2017, designating *inter alia* Viet Nam (in which the Respondent is said to reside) and covering goods in class 3;
- International Trademark Registration CERAVER No. 1693411 registered on June 2, 2022, designating China and United Kingdom and covering goods and services in classes 3, 9, 35 and 41; and
- European Union Trade Mark Registration CERAVER No. 016162752, dated June 21, 2017, covering goods in class 3.

As to the confusingly similar element for the purposes of the Policy, the Panel has proceeded to compare the disputed domain name to the trademark rights which have been proved.

Section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) states that “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘info’, ‘.com’, ‘.club’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”, and the Panel finds no reason why this established practice should not be applied to the present case.

Apart from the generic Top-Level Domain (being “.site”), the Complainant contends that the disputed domain name contains its trademark CERAVE in its entirety.

In this connection, the Panel notes section 1.7 of the [WIPO Overview 3.0](#) which states that “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

In the circumstances, the Panel sees no reason why these established practices should not be applied to the present case and holds that the disputed domain name is identical or confusingly similar to the Complainant’s trademarks. Accordingly, the Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate a respondent’s rights or legitimate interests in a domain name:

- (i) before any notice to it 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 has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent 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 or service mark at issue.

The consensus view of UDRP panels is that the burden of proof in establishing no rights or legitimate interests in respect of a domain name rests with the complainant in making out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Complainant contends with relevant evidence that: (i) the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services; (ii) the Respondent has not been commonly known by the disputed domain name; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel is satisfied that the Complainant has established a *prima facie* case. By not submitting a response, the Respondent has failed to overturn such *prima facie* case and has also failed to invoke any of the defenses as set out in paragraph 4(c) of the Policy.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

To fulfill the third requirement, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

In the present case, the Panel is satisfied with the Complainant's contention that the registrations of the CERAVE trademarks took place many years ago and it had established its reputes internationally long before.

In the circumstances, the Panel holds that the Respondent was most likely to have known of the Complainant, its products, and trademarks prior to registering the disputed domain name on December 2, 2022 (see section 3.2.2 of the [WIPO Overview 3.0](#)) and holds that the Respondent registered the disputed domain name in bad faith.

As to the use of the disputed domain name, the Complainant contends that the disputed domain name "has been directing to a fake website in Vietnamese that reproduces Complainant's trademark and its visuals mimicking its official website, offering cosmetic products under the Complainant's trademark for sale with a discount by providing a link for placing the order, which are likely to be counterfeit goods. Said website also displays on the footer as a main point of contact a link to "https://ceravevietnam.vn", another infringing website reproducing Complainant's visuals and offering alleged CeraVe products for sale" and submits documentary evidence in support of its contention.

The Panel notes that no counter-argument has been submitted by the Respondent.

Taking all matters into careful consideration, the Panel holds that the Respondent registered and is using the disputed domain name in bad faith. The Panel therefore concludes that the third requirement of the Policy has been met.

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 <cerave.site> be transferred to the Complainant.

/Teruo Kato/

Teruo Kato

Sole Panelist

Date: March 23, 2023