

ADMINISTRATIVE PANEL DECISION

Laboratoires M&L v. Name Redacted

Case No. D2023-0725

1. The Parties

The Complainant is Laboratoires M&L, France, represented by IP Twins, France.

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <locciittane.com> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2023. On February 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 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 on February 22, 2023.

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”).

¹ The Respondent appears to have used the name and/or contact details of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST 12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 30, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on April 6, 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

The Complainant is part of the L'Occitane Group, a cosmetics and well-being products manufacturer and retailer which employs more than 8,000 people around the world and has almost 3,000 retail outlets, including around 1,500 owned stores.

The Complainant holds a number of trade marks in the term L'OCCITANE, including the following (the "Trade Marks"):

- International trade mark L'OCCITANE registered under No. 1006051 on October 8, 2008;
- International trade mark L'OCCITANE registered under No. 579875 on November 5, 1991;
- International trade mark L'OCCITANE registered under No. 1330027 on June 28, 2016.

The Domain Name was registered on February 15, 2023 and is not connected to a website. Shortly after the Domain Name had been registered, an e-mail from an address <[...]@lociittane>, using the name of the CEO of the L'Occitane Group, was sent to a third party, requesting payment of a large amount into the local bank account of another person.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Marks as the only difference is the doubling of the letters 'i' and 't', which does not prevent a finding of confusing similarity under the Policy. The Complainant further states that it enjoys a widespread reputation and goodwill through the continuous and long-standing use of the Trade Marks.

According to the Complainant, the Respondent should be considered as having no rights or legitimate interests in respect of the Domain Name, on the following grounds:

- The Respondent is not commonly known by the Domain Name, and, according to a trade mark search carried out by the Complainant, has acquired no trade mark or service mark rights related to the "l'occitane" term.
- The Respondent's use of the Domain Name or preparation to use the Domain Name demonstrate no intent to use it in connection with a *bona fide* offering of goods or services. According to the Complainant's research the Domain Name is linked to MX servers which allow the sending and reception of emails. In addition, the Complainant states that it has been made aware of a fraud scheme being perpetrated with the Domain Name, which infringes on the Complainant's rights in the Trade Marks and cannot be considered as a *bona fide* offering of goods or services under the Policy.
- The Respondent is not commercially linked to the Complainant and the Complainant never granted the Respondent any authorization or consent to use the Trade Marks.

- Since the Complainant's registration and use of the Trade Marks predate by far registration of the Domain Name, the burden is on the Respondent to establish any rights or legitimate interests it may have or have had in the Domain Name.

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

The Complainant states that, since the Trade Marks have enjoyed wide-spread extensive use and are well-known, it seems inconceivable that the Respondent was not aware of the Complainant's earlier rights.

In addition, the Complainant contends that the Respondent's choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and the Trade Marks.

Indeed, the Complainant submits, a simple search on an online search engine yields results only related to the Complainant or the Trade Marks.

According to the Complainant there is no way that the Respondent could use the Domain Name in connection with a *bona fide* offer of products or services, as such use without authorization from the Complainant would amount to trade mark infringement and damage to the repute of the Trade Marks. Such use of the Domain Name by the Respondent would *de facto* amount to bad faith active use, the Complainant contends.

Furthermore, the Complainant states that the Respondent is using the Domain Name in relation to a fraud scheme which may damage the Complainant's fame and worldwide reputation, and may only be seen as bad faith use on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates L'OCCITANE, of which the Trade Marks consist, in its entirety, be it with a misspelling consisting of a doubling of the "i" and the "t". As the Domain Name consists of a common, obvious, or intentional misspelling of the Trade Marks this does not affect the confusing similarity of the Domain Name to the Trade Marks for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9 and, *inter alia*, *Allianz SE v. WhoisGuard Protected, WhoisGuard, Inc. / Azir Malik*, WIPO Case No. [D2019-2511](#)). The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name. If the Respondent fails to come

forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has rights or legitimate interests in the Domain Name, it should also be taken into account that (i) the nature of the Domain Name, incorporating the Trade Marks in their entirety with a misspelling, points to an intention to confuse Internet users seeking for or expecting the Complainant; and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name.

Furthermore, in view of the fact that the Domain Name has been used for a phishing mail to fraudulently obtain payments, using an e-mail address linked to the Domain Name, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, nor does such use constitute a *bona fide* offering of goods or services ([WIPO Overview 3.0](#), section 2.13.1).

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Name, the Respondent was or should have been aware of the Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some 32 years after the registration of the earliest of the Trade Marks;
- the Respondent has incorporated L'OCCITANE, of which the Trade Marks consist, in its entirety;
- the typo in the Domain Name, doubling the "i" and "t", a likely mistake an Internet user would make when looking for the Trade Marks; and,
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a Response to the Complaint; and
- the Respondent has used the Domain Name to further a fraud scheme impersonating the Complainant.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith.

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, <lociittane.com>, be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: April 20, 2023