

ADMINISTRATIVE PANEL DECISION

Marionnaud Parfumeries v. gao hang and Gene Markle Case No. D2023-3290

1. The Parties

The Complainant is Marionnaud Parfumeries, France, represented by STRATO-IP, France.

The Respondents are gao hang, China; and Gene Markle, United States of America.

2. The Domain Names and Registrars

The disputed domain name <marionnaud.online> is registered with NameCheap, Inc. The disputed domain name <marionnaud.top> is registered with Gname.com Pte. Ltd. NameCheap, Inc. and Gname.com Pte. Ltd. are separately and collectively referred to below as “the Registrar”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 1 and August 2, 2023, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names that differed from the named Respondents (Redacted for Privacy and Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 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 August 14, 2023.

On August 11, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 14, 2023, the Complainant requested that English be the language of the proceeding. The Respondents 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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on August 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on September 11, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 14, 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 a perfume and cosmetics chain with over one thousand shops in Europe. Its stores offer a range of products under third party brands as well as its own MARIONNAUD mark. The Complainant has obtained multiple trademark registrations in multiple jurisdictions, including the following:

- French trademark registration number 97687296 for MARIONNAUD, filed and registered on July 16, 1997, specifying goods and services in classes 3, 35, and 44; and
- French trademark registration number 4101199 for a semi-figurative MARIONNAUD PARIS mark, filed and registered on June 26, 2014, specifying services in classes 35 and 44.

The above trademark registrations remain current. The Complainant has also registered the domain names <marionnaud.fr> (registered on May 4, 2000) and <marionnaud.com> (registered on September 21, 2004) that it uses in connection with online stores where it prominently displays its MARIONNAUD mark and MARIONNAUD PARIS semi-figurative mark and offers for sale perfumes and cosmetics.

The Respondents are identified as two individuals. The Respondent gao hang is the holder of the disputed domain name <marionnaud.top>. The Respondent Gene Markle is the holder of the disputed domain name <marionnaud.online>.

The disputed domain name <marionnaud.top> was registered on June 29, 2023. It formerly resolved to a website that prominently displayed the MARIONNAUD PARIS semi-figurative mark and offered for sale fragrances at discount prices. Prices were displayed in EUR. The layout of the website was similar to that of the Complainant's website. It displayed hyperlinks to the Complainant's social media accounts and a video posted to one of those accounts regarding the Complainant's telephone service *Âllo Boutique*.

The disputed domain name <marionnaud.online> was registered on July 4, 2023. It formerly resolved to a landing page hosted by the Registrar displaying links related to perfumes and cosmetics. This disputed domain name was also used in the contact email address displayed on a website associated with the domain name <mottlemome.shop> that was very similar to the website associated with the disputed domain name <marionnaud.top>.

On July 6, 2023, the Complainant sent cease-and-desist letters to the Registrar and the hosting provider for the above websites. The hosting provider deactivated the websites but the registrations of the disputed domain names have not been cancelled. At the time of this Decision, neither disputed domain name resolves to an active website; both are passively held.

5. Parties' Contentions

A. Complainant

The disputed domain names are identical or confusingly similar to the Complainant's MARIONNAUD trademarks.

The Respondents have no rights or legitimate interests in respect of the disputed domain names. The Respondents are neither affiliated with the Complainant in any way, nor have they been granted a license or otherwise authorized by the Complainant to use its MARIONNAUD trademarks, whether in a domain name registration, an email address, trademarked content publishing, or trademarked goods sales offers. The Respondents are not commonly known by the disputed domain names.

The disputed domain names were registered and are being used in bad faith. Given the content of the website associated with the disputed domain name <marionnaud.top>, it is implausible that the Respondents were unaware of the Complainant at the time that they registered the disputed domain names. It is impossible that the Respondents did not have the MARIONNAUD trademark in mind due to its highly arbitrary character and its reputation in the cosmetics sector. The disputed domain name <marionnaud.top> resolved to a website that imitated the Complainant's website. The disputed domain name <marionnaud.online> was used in a contact email address to contribute to making Internet users believe that the website associated with the domain name <mottlemome.shop> was an official website of the Complainant.

B. Respondents

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

6. Discussion and Findings

6.1 Procedural Issues

A. Consolidation: Multiple Respondents

The amended Complaint initiates disputes in relation to two nominally different domain name registrants regarding two disputed domain names. The Complainant requests consolidation of the disputes pursuant to paragraph 10(e) of the Rules. It alleges that the domain name registrants are under common control of the same person or entity. The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. However, the Panel does not consider that paragraph 3(c) was intended to enable a single person or entity to put a complainant to the unnecessary time, expense, and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider: (i) whether the disputed domain names or associated websites are subject to common control; and, if so, (ii) whether the consolidation would be fair and equitable to all Parties. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#); and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names are identical (but for their respective generic Top-Level Domains ("gTLDs")) and they were registered within a week of each other. The disputed domain name <marionnaud.online> was used in the contact email address on a website (associated with the domain name <mottlemome.shop>) that was identical to the website associated with the disputed domain name <marionnaud.top>. In these circumstances, the Panel is persuaded that the disputed domain names are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes regarding both disputed domain names would be unfair or inequitable to either Party.

Accordingly, the Panel will decide the Complaint regarding both disputed domain names registered in the names of "gao hang" and "Gene Markle" (separately and collectively referred to below as the "Respondent").

B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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 Registrar confirmed that the Registration Agreement for the disputed domain name <marionnaud.online> is in English and the Registration Agreement for the disputed domain name <marionnaud.top> is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that it does not understand Chinese, translation of the Complaint into Chinese would be extremely costly, whereas the Respondent is sufficiently familiar with English to participate in the proceeding in English as one disputed domain name contains an English word while the website formerly associated with the other disputed domain name was in English.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English, which is the language of the Registration Agreement for one disputed domain name. Although the Registration Agreement for the other disputed domain name is in Chinese, the website formerly associated with that disputed domain name was in English, from all of which it is reasonable to presume that the Respondent understands that language. Moreover, despite the Center having sent the written notice of the Complaint and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of language nor expressed any interest in participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements with respect to each disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the MARIONNAUD mark.

The disputed domain names wholly incorporate the MARIONNAUD mark as their respective operational elements. Their only additional element is a gTLD extension (either “.online” or “.top”). As a standard requirement of domain name registration, a gTLD extension may be disregarded in the comparison between the disputed domain names and the Complainant’s mark. See [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the disputed domain names are identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name <marionnaud.top> was formerly used with a website that prominently displayed the Complainant's semi-figurative MARIONNAUD mark and offered for sale perfumes and cosmetics. The layout of the website was similar to that of the Complainant's website. It displayed multiple links to the Complainant's social media accounts and gave the impression that it was operated by, or affiliated with, the Complainant. However, the Complainant submits that the Respondent is not affiliated with the Complainant in any way and that the Complainant has not granted the Respondent any license or authorization to use its MARIONNAUD trademarks. Meanwhile, the disputed domain name <marionnaud.online> resolved to a landing page displaying links related to perfumes and cosmetics and was used in the contact email address on a website very similar to that associated with the other disputed domain name, but which was not in fact affiliated with the Complainant either, thus contributing to the false impression that the website was also operated by, or affiliated with, the Complainant. The disputed domain names are now passively held. In the Panel's view, these circumstances indicate that the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services, nor is it making a legitimate noncommercial or fair use of the disputed domain names.

As regards the second circumstance set out above, the Respondent's names are listed in the Registrar's Whois database as "gao hang" and "Gene Markle", not the disputed domain names. Nothing on the record indicates that the Respondent has been commonly known by the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because it did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

The disputed domain names were both registered in 2023, years after the Complainant registered its MARIONNAUD trademark. MARIONNAUD is a name not a dictionary word. The disputed domain names both wholly incorporate that mark as their respective operational elements. The website formerly associated with the disputed domain name <marionnaud.top> displayed the Complainant's semi-figurative MARIONNAUD PARIS mark and displayed links to the Complainant's social media accounts. Meanwhile, the disputed domain name <marionnaud.online> was used in a contact email address on another very similar website. In view of these circumstances, the Panel finds that the Respondent was aware of the Complainant and its MARIONNAUD mark at the time that it registered both disputed domain names.

The Respondent formerly used the disputed domain name <marionnaud.top> to resolve to a website that prominently displayed the Complainant's semi-figurative MARIONNAUD PARIS mark and offered for sale many of the same products that the Complainant sells but at discount prices. This disputed domain name operated by attracting Internet users searching for the Complainant and diverting them to the Respondent's website. The evidence includes an instance of actual consumer confusion. This use was intentional and for the commercial gain of the Respondent. Accordingly, the Panel finds that by using the disputed domain name <marionnaud.top>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on that website, within the terms of paragraph 4(b)(iv) of the Policy.

The Respondent formerly used the disputed domain name <marionnaud.online> to resolve to a landing page displaying links related to perfumes and accessories and to create an email address. The Panel recalls that the use of a domain name for purposes other than to host a website may constitute bad faith. See [WIPO Overview 3.0](#), section 3.4. In the present case, the email address for which this disputed domain name was used was displayed as a contact detail on a website that was falsely presented as if it were operated by, or affiliated with, the Complainant, and offered for sale perfumes and accessories. The use of this disputed domain name, which is identical to the Complainant's MARIONNAUD mark, was evidently intended to contribute to the false impression that the website was operated by, or affiliated with, the Complainant, for commercial gain. In view of these circumstances, the Panel finds that the disputed domain name <marionnaud.online> was registered and is being used in bad faith.

The website and landing page associated with the disputed domain names have been deactivated by the hosting provider at the request of the Complainant. However, as long as the disputed domain names remain registered by the Respondent, there is a risk that they may be used in bad faith once more. Accordingly, the current passive holding of the disputed domain names does not alter the Panel's conclusions above.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 disputed domain names <marionnaud.online> and <marionnaud.top> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: September 20, 2023