

ADMINISTRATIVE PANEL DECISION

Alpol Cosmetique v. Moshood shehu
Case No. D2023-3133

1. The Parties

The Complainant is Alpol Cosmetique, France, represented by Cabinet Germain & Maureau, France.

The Respondent is Moshood shehu, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <alpolcosmetique.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 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 (REDACTED FOR PRIVACY, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 27, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on September 4, 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 an international manufacturer of cosmetic products. It has sold its products under its ALPOL trademark since 1947, and provided the Panel with details of extensive use of its ALPOL trademark internationally. The Complainant is the proprietor of French trademark registration number 1363802, dated July 17, 1986, of its ALPOL trademark.

The disputed domain name was registered on February 11, 2023, and resolves to a website offering cosmetic products for sale.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its ALPOL trademark, containing the ALPOL trademark in its entirety, together with a merely descriptive additional element.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that the Respondent is not generally known by the disputed domain name, and the Respondent has never been granted permission to use the Complainant's ALPOL trademark in connection with the registration of a domain name or otherwise

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith in connection with the website referred to above.

The Complainant has provided the Panel with evidence of the Respondent's use of the disputed domain name in connection with phishing activity, impersonation of the Complainant, and to attempts to divert payments to the Complainant to fraudulently obtain bank details.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights to the trademark ALPOL for the purposes of these proceedings.

It is well established in prior decisions under the Policy that the generic Top-Level Domain ("gTLD") ".com" may generally be disregarded when comparing a trademark with a disputed domain name. The Panel finds that the gTLD ".com" may be disregarded in the circumstances of the present case.

The Complainant's ALPOL trademark is instantly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant's trademark. The mere addition of the word "cosmetique", clearly does not detract from this finding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel considers that the Complainant's allegations under section 5 above are sufficient to provide a *prima facie* case under this heading, and the burden of production of evidence shifts to the Respondent.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

The composition of the disputed domain name carries a risk of implied affiliation with the Complainant. Moreover, the disputed domain name was used to attempt to impersonate the Complainant. Such use can never confer rights or legitimate interests on the Respondent.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the circumstances of the present case, in which the Panel regards it as self-evident that the Complainant's trademark was deliberately targeted in the disputed domain name, the Panel finds that the disputed domain name was registered in bad faith.

It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with phishing constitutes use of the disputed domain name in bad faith. It is also well-established in prior decisions under the Policy that the use of a disputed domain name in connection with the sale of products competing with those of the Complainant constitutes use of the disputed domain name in bad faith. In the circumstances of the present case, which contain the aggravating factor of an attempt to impersonate the Complainant, a finding of use in bad faith is clearly appropriate, and the Panel so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 disputed domain name <alpolcosmetique.com> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: September 18, 2023