

ADMINISTRATIVE PANEL DECISION

Elemis USA, Inc. v. DOMAIN ADMINISTRATOR, Buy this domain
on Dan.com ----

Case No. D2023-3301

1. The Parties

The Complainant is Elemis USA, Inc., United States of America, represented by IP Twins, France.

The Respondent is DOMAIN ADMINISTRATOR, Buy this domain on Dan.com ----, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 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 August 4, 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 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent’s default on August 29, 2023.

The Center appointed Lynda J. Zadra-Symes 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

Complainant is Elemis USA, Inc., part of the L'Occitane group of companies. Founded in 1989, Complainant manufactures and distributes face and body skincare products with formulas, spa treatments, supplements and more. Complainant's ELEMIS products are sold in more than 20 countries on all continents, generating revenues of USD 86 million during fiscal year 2022. In addition to its skin care products, Complainant operates a spa under the name "House of Elemis" which is located in London.

Complainant owns numerous trademark registrations worldwide for the mark ELEMIS for use in connection with cosmetics, skin care products, and related products and services, including the following:

European Union trademark No. 003880366, registered October 10, 2005

Canadian trademark No. TMA758305, registered January 29, 2010

New Zealand trademark No. 224940, registered February 27, 1996

Complainant also owns numerous domain names incorporating its ELEMIS trademark, including <elemis.com> which was registered in 1997. Complainant's Instagram page is currently followed by more than 500,000 Internet users.

The disputed domain name was registered on February 17, 2023, and resolves to an active page where the domain name is offered for sale.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar with Complainant's ELEMIS trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its claim, Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

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

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Complainant has demonstrated that it has rights in the trademark ELEMIS. The disputed domain name incorporates Complainant's trademark in its entirety. The additional term "ldnlab" does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark.

B. Rights or Legitimate Interests

Complainant contends that Respondent is not affiliated with or connected to Complainant in any manner. At no time has Complainant licensed or otherwise endorsed, sponsored or authorized Respondent to use Complainant's mark or to register the disputed domain name. The record is devoid of any facts that establish any rights or legitimate interests of Respondent in the disputed domain name. There is no evidence that Respondent has been commonly known by the disputed domain name or that it has any rights that might predate Complainant's adoption and use of its mark. Complainant conducted a search of the publicly available trademark registers and did not find any trademark registrations containing the word ELEMIS in the name of Respondent.

Respondent has not made, and is not making, a legitimate noncommercial or fair use of the disputed domain name. Respondent has not used the disputed domain name in connection with the *bona fide* offering of goods or services. The disputed domain name resolves to an active page where the disputed domain name is offered for sale. This is further evidence that Respondent lacks any rights or legitimate interests in respect of the disputed domain name. In light of the well-known nature of Complainant's ELEMIS trademark, there is no plausible use of the disputed domain name that would be legitimate without Complainant's authorization or consent. The disputed domain name is inherently misleading and suggests sponsorship or endorsement by the trademark owner. The geographically descriptive term "ldn" is a common abbreviation for "London", where Complainant's spa "House of Elemis" is located. Further, the generic term "lab" is related to Complainant's core business of manufacturing skin care products. Such composition cannot constitute fair use of the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Complainant submitted evidence that its ELEMIS trademarks are so well-known that it is inconceivable that Respondent was unaware of Complainant or its trademark rights at the time of registering the disputed domain name. Previous panels have acknowledged the renown of Complainant's ELEMIS trademark. The record indicates a high likelihood that Respondent was aware of Complainant's ELEMIS trademark when registering the disputed domain name. Registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Respondent has failed to rebut that presumption here.

In addition, Respondent most likely registered the disputed domain name with the expectation that Internet users searching for Complainant's services and products would mistakenly be directed to Respondent's website for the purpose of obtaining pay-per-click advertising revenue. Thus, Respondent is attempting to attract, for commercial gain, Internet users to Respondent's website to which the disputed domain name resolves, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship,

affiliation or endorsement of Respondent's website. Further, Respondent is offering the disputed domain name for sale in an attempt to benefit financially from use of Complainant's trademark in the disputed domain name. The Panel finds that Respondent, on balance of probabilities, registered the disputed domain name primarily for the purpose of selling it to Complainant at an amount exceeding the out-of-pocket costs directly related to the disputed domain name. [WIPO Overview 3.0](#), section 3.1.1.

The Panel finds that Respondent has registered and used the disputed domain name 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, <elemisldnlab.com>, be transferred to the Complainant.

Lynda J. Zadra-Symes

Lynda J. Zadra-Symes

Sole Panelist

Date: September 18, 2023