

ADMINISTRATIVE PANEL DECISION

LR Health & Beauty Systems GmbH v. Viaceslav Nidelschii
Case No. D2023-3757

1. The Parties

The Complainant is LR Health & Beauty Systems GmbH, Germany, represented by Jonas Rechtsanwaltsgesellschaft mbH, Germany.

The Respondent is Viaceslav Nidelschii, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <lr-health.beauty> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2023. On September 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 15, 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 amendment to the Complaint.

The Center verified that the Complaint together with the amendment to the 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 September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on October 25, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

Although the Respondent's mailing address is stated to be in Ukraine (though such fact is not possible to verify), which is subject to an international conflict at the date of this Decision which may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. Further to the Rules, the Center transmitted written notice of the Complaint to the Respondent. While it is noted that the communications to the Respondent's email addresses failed, the Panel notes that the courier was able to deliver the written notice to the Respondent, and that notice of the Complaint was also sent to the Respondent through the contact form found at the website at the disputed domain name.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar being in the United States of America. The Panel moreover notes that it is clear the Complainant has been targeted and that this is not a coincidental domain name registration, as is further described herein.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is LR Health & Beauty Systems GmbH, a German company operating in the field of high-quality health and beauty products, and owning several trademark registrations worldwide for LR and LR HEALTH & BEAUTY SYSTEMS, among which:

- German Trademark Registration No. 2079005 for LR and design, registered on September 26, 1994;
- German Trademark Registration No. 30644164 for LR HEALTH & BEAUTY SYSTEMS and design, registered on November 24, 2006;
- International Trademark Registration No. 939691 for LR HEALTH & BEAUTY SYSTEMS and design, registered on January 15, 2007, also extended to Ukraine;

- European Union Trademark Registration No. 013191218 for LR and design, registered on May 18, 2021.

The Complainant also operates on the Internet, its website being “www.lworld.com”.

The Complainant provided evidence in support of the above.

According to the WhoIs records, the disputed domain name was registered on March 5, 2023, and it resolves to a website in which the Complainant’s trademark and logo are reproduced, consisting of a copy of an earlier version of the Complainant’s official website.

6. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that disputed domain name is confusingly similar to its trademarks LR and LR HEALTH & BEAUTY SYSTEMS.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website in which the Complainant’s trademark and logo are reproduced, consisting of a copy of an earlier version of the Complainant’s official website.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant’s trademarks LR and LR HEALTH & BEAUTY SYSTEMS are well known in the field of high-quality health and beauty products. Therefore, the Respondent targeted the Complainant’s trademarks at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to impersonate the Complainant and attract, for commercial gain, Internet users to the Respondent’s website, creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant’s contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3.

7. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the marks LR and LR HEALTH & BEAUTY SYSTEMS are recognizable within the disputed domain name. While typically disregarded, the generic Top-Level Domain in this instance (".beauty") forms part of one the relevant trademarks and thus may be considered for purposes of the first element comparison. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name 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. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademarks LR and LR HEALTH & BEAUTY SYSTEMS in the field of high-quality health and beauty products is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the website at the disputed domain name, in which the Complainant's trademark and logo are reproduced, is a copy of an earlier version of the Complainant's official website.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademarks as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order both to disrupt the Complainant's business, and to attract Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademark LR HEALTH & BEAUTY SYSTEMS in its entirety, with the only exception of the terms "&" and "systems" that are missing, further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on the available record, the Panel finds the third element of the Policy has been established.

8. 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, <lr-health.beauty> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: October 26, 2023