

ADMINISTRATIVE PANEL DECISION

Clarins v. Yousef Amru
Case No. D2024-2012

1. The Parties

The Complainant is Clarins, France, represented by Tmark Conseils, France.

The Respondent is Yousef Amru, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <fashionbyclarins.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 14, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 2024, 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 (IDENTITY UNDISCLOSED) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 2024, 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 May 24, 2024.

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 May 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 25, 2024.

The Center appointed José Pio Tamassia Santos as the sole panelist in this matter on July 11, 2024. 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 one of the major actors in the field of cosmetics and make-up products. It has been doing business in France for more than 60 years where it is well-known, and is also well-established worldwide.

To this extent, the Complainant owns many trademarks worldwide, and relies notably upon the following CLARINS trademarks having effects in European Union countries, United Kingdom, Canada, China, Thailand and United States of America as follows:

- French Trademark Registration CLARINS n° 1637194, filed on January 7, 1991, and covering notably cosmetics in class 3 and beauty care services in class 44;
- European Union Trademark Registration CLARINS No. 005394283, registered on October 5, 2010, and covering notably cosmetics in class 3 and cosmetic and beauty care services in class 44;
- United Kingdom Trademark registration CLARINS No. UK00905394283, registered on October 5, 2010 and covering notably cosmetics in class 3 and beauty care services in class 44;
- Canadian Trademark Registration CLARINS No. TMA645123, registered on July 29, 2005 and covering cosmetic products in class 3;
- American Trademark Registration CLARINS No. 73746658, registered on January 2, 1990 and covering cosmetics and make-up goods in class 3;
- American Trademark Registration CLARINS No. 72361433, registered on May 30, 1972 and covering cosmetics and make-up goods in class 3.

The above trademarks, which predate the Respondent's disputed domain name, are in force and are the exclusive property of the Complainant. Finally, the Disputed domain name was registered on March 28, 2024, and it resolves to a website in Spanish purportedly offering the Complainant's products for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its CLARINS mark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

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

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the disputed domain name the Complainant must prove that:

- (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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

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 disputed domain name reproduces the Complainant's trademark CLARINS which remains perceptible. The addition of the element "fashionby" is not sufficient to avoid confusion.

As the Complainant's trademark is reproduced identically within the disputed domain name where it remains perceptible and can be isolated, it is blatant that the disputed domain name is confusingly similar to the above-cited trademarks owned by the Complainant.

In this scenario earlier UDRP decisions have held that when a domain name wholly incorporates a Complainant's registered trademark, it is sufficient to establish confusing similarity for purpose of the Policy. See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.*, WIPO Case No. [D2000-0047](#); *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#).

Although the addition of other terms here, "fashionby", may bear on assessment of the second and third elements, the Panel finds that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, and 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Furthermore, the Respondent is not making a fair use of the disputed domain name, since it is used in relation with a website which is unauthorized, offering infringing CLARINS' cosmetic products under the Complainant's trademark and which is a knock-off version of the Complainant's official website.

The Respondent uses the same visual as those on the official websites of the Complainant, demonstrating that the Complainant's products are offered on the website under the disputed domain name using the same pictures.

The Complainant states that the Respondent sells infringing cosmetic products at a lower price than the authentic ones by reproducing the Complainant's well-known trademarks and imitating the official website, which means the disputed domain name carries a risk of implied affiliation.

The Respondent clearly misleads the consumers and diverts them from the real and official website of the Complainant, in order to create commercial gain for himself. Such use, which relies on exploiting Internet user confusion, cannot and does not constitute bona fide commercial use sufficient to legitimize any rights or interests the Respondent might have in the disputed domain name.

In view of the foregoing, it has to be concluded that it is without rights or legitimate interests that the Respondent registered the disputed domain name. By registering this disputed domain name, the Respondent seeks to take advantage of the Complainant's registered prior rights.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name and 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.

The disputed domain name was created quite recently, on March 28, 2024. It is also recalled that the Complainant's trademark has a well-known character worldwide, and has a long-standing worldwide operating website under the domain names <clarins.fr> and <clarins.es>.

The Complainant contends that the Respondent has not got any legitimate reason to register this disputed domain name except only, the aim to act in bad faith by taking advantage of the confusion created by its registration.

These circumstances clearly indicate that the Respondent uses the disputed domain name in bad faith, primarily for the purpose of attracting, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, of its website.

It is also worth noting that the Respondent has taken steps to cover his identity, which raises suspicions on its real intentions. Indeed, considering the overall circumstances of this case, if he would have the will to make a genuine use of the disputed domain name, he wouldn't have hidden his identity.

Previous UDRP decisions have held the existence of bad faith in similar circumstances. See *Global Esprit Inc. v. Living 4*, WIPO Case No. [D2004-0318](#), the panel concluded to the bad faith of the Respondent as "Both the Respondent and the Complainant are in the swimwear business, and are clearly competitors. The Respondent also does not appear to use or otherwise have any connection with 'LANE 4' in the course of its business. In the circumstances, an inference may be drawn that the Respondent has registered and used the Disputed Domain Names in bad faith, on account of the Respondent having registered the domain names primarily for the purpose of disrupting the business of a competitor as contemplated in paragraph 4(b)(iii) of the Policy, and/or that the Respondent had registered and used the Disputed Domain Names 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 its website".

Further, the Complainant claims that by using the disputed domain name, the Respondent is exploiting the Complainant's trademark in order to harvest usernames and passwords of consumers and gain "click through" commissions from the diversion of Internet users, which is a common example of registration and use in bad faith. The Respondent has not refuted these allegations.

Panels have held that the use of a domain name for illegal activity, here, claimed phishing and 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 Panel finds that the Complainant has established the third element 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 <fashionbyclarins.com> be transferred to the Complainant.

/José Pío Tamassia Santos/

José Pío Tamassia Santos

Sole Panelist

Date: July 25, 2024