

ADMINISTRATIVE PANEL DECISION

Simon Barrère and Laboratoire de l'Abbé Soury SAS v. Annick Lella-Kouassi
Case No. D2024-2682

1. The Parties

The Complainants are Simon Barrère, Switzerland and Laboratoire de l'Abbé Soury SAS, France, represented by Gevers & Ores, France.

The Respondent is Annick Lella-Kouassi, France.

2. The Domain Name and Registrar

The disputed domain name <jouvenceartisanale.com> is registered with IONOS SE (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 10, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on July 15, 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 July 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 6, 2024.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on August 15, 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 Complainants specialize in the production and distribution of cosmetic and pharmaceutical products and are based in France.

The Complainant Simon Barrère has registered the following JOUVENCE trade mark, of which the Complainant Laboratoire de l'Abbé Soury SAS is the exclusive trade mark licensee:

European Union Trade Mark No. 001531458 JOUVENCE filed on February 29, 2000 and registered on May 16, 2002 for goods in classes 3 and 5.

The disputed domain name was registered on October 10, 2018. The disputed domain name directs to a website selling cosmetic products.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants argue that the disputed domain name is confusingly similar to the JOUVENCE trade mark as it includes the JOUVENCE trade mark entirely.

The Complainants also contend that the disputed domain name was registered and is being used solely for the purpose of creating confusion among Internet users by impersonating the Complainants, and that this use of the disputed domain name does not constitute a bona fide offering of goods or services.

The Complainants assert that the Respondent registered and used the disputed domain name in bad faith, with the deliberate intention to create confusion with its prior rights regarding the source, affiliation, or endorsement of the website associated with the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary question: Multiple complainants

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.11.1

Having reviewed the case, it appears that the two Complainants are two related businesses. Simon BARRÈRE is the owner of the JOUVENCE trade mark, which is historically being used to distribute cosmetic and pharmaceutical products in France and the Benelux countries. Since 2019, these products are being distributed by the French company LABORATOIRE DE L'ABBÉ SOURY, the exclusive trade mark licensee.

As such, the Panel finds that they have a specific common grievance against the Respondent and accepts the consolidation of the Complainants in this case.

6.2 Substantive issue

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.

The Complainants have shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the trade mark JOUVENCE is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

Finally, the Panel notes that the JOUVENCE trade mark relied upon by the Complainants is pending cancellation proceedings. Whilst the JOUVENCE trade mark might thus be cancelled in the future, for the purpose of qualifying for the standing requirement under the Policy, the Panel finds that seeing as the Complainants are still the legal owner of the JOUVENCE trade mark, the first element of the Policy has been established. In any event, the UDRP would not be the appropriate forum to assess the merits of any potential cancellation proceedings.

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.

As part of a panel's general powers articulated in paragraphs 10 and 12 of the Rules, the Panel has undertaken limited factual research into matters of public record as the Panel considered such information useful to assessing the case merits and reaching a decision under the second and third elements.

When performing a Google search for the term "jouvence artisanale", the results on the first page refer to the Respondent (including the first result) but there is not one result that refers to the Complainants. When performing a Google search for the term "jouvence", the results on the first page mainly refer to the dictionary term "jouvence" ("youth" in French and "rejuvenating" when used in conjunction with another term such as "eau de jouvence") and other businesses or websites that have no link with the Complainants and the first result relating to the Complainants is found on the second page of results.

In addition, the Panel carried out a quick trade mark search for the term “jouvence” in the INPI database (French intellectual property office database) and found numerous trade marks including the term “jouvence” including a substantial part registered in class 5.

The disputed domain name directs to a website which, in the absence of evidence to the contrary, seems to be a legitimate website used (before notice to the Respondent of the dispute), in connection with a bona fide offering of goods and using the term “jouvence” in line with its dictionary meaning, in conjunction with the adjective “artisanale” also used in line with its dictionary meaning. [WIPO Overview 3.0](#), section 2.2.

Against the above background, having considered the evidence on record, the Panel finds that the Complainants have failed, on the balance of probabilities, to substantiate that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Given that the second element of the Policy has not been established, the Panel is not required to address the third element of the Policy. However, in the interest of completeness, the Panel has briefly covered his findings under the third element of the Policy in relation to registration of the disputed domain name in bad faith.

Essentially, whilst the Complainant claims that its trade mark JOUVENCE is well-known, the Complainant has failed to provide any concrete evidence of such renown and the Google searches carried out by the Panel do not support such a claim. This is particularly problematic given the fact that the term “jouvence” has a dictionary meaning (“youth” in French) and is often used, inter alia, in relation to pharmaceutical or cosmetic goods including, in the absence of evidence to the contrary, in the disputed domain name and on the associated website.

In light of this, on the balance of probabilities, the Panel finds that it has not been established that the Respondent would have been aware of the JOUVENCE trade mark of the Complainants and it has not been established that the Respondent targeted the Complainants and their JOUVENCE trade mark.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: August 29, 2024