

## ADMINISTRATIVE PANEL DECISION

Clarins v. I ss, 123  
Case No. D2024-3121

### 1. The Parties

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

Respondent is I ss, 123, Bosnia and Herzegovina.

### 2. The Domain Name and Registrar

The disputed domain name <clarinsusa-outlet.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 30, 2024. On July 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 Complainant on August 7, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 29, 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 Respondent of the Complaint, and the proceedings commenced on August 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on September 27, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on October 3, 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**

Complainant is a French company registered in the French commercial register of Nanterre. Complainant develops, manufactures and distributes cosmetic and skincare products under the CLARINS trademark in France and in other countries around the world. Complainant has been doing business under the CLARINS trademark for decades. It operates commercial websites, including at the domain names <clarins.fr> and <clarinsusa.com>.

Complainant is owner of registrations for the word trademark CLARINS in a number of countries. Representative of these trademark registrations are: on the register of the French Institut National de la Propriete Industrielle (INPI), registration number 1161785, registration dated June 26, 1981, in International Classes (ICs) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42, covering, inter alia, an array of cosmetic and skin care goods, and services; on the register of the European Union Intellectual Property Office (EUIPO), registration number 005394283, registration dated October 5, 2010, in ICs 3, 5, 10, 16, 21, and 44, covering, inter alia, cosmetic and skin care goods and services; and on the Principal register of the United States Patent and Trademark Office (USPTO), registration number 935002, registration dated May 30, 1972, in IC 3, covering skin cleaners, as further specified.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to the Whois record the disputed domain name was registered on July 18, 2024. There is no evidence on the record of this proceeding of any party other than Respondent owning or controlling the disputed domain name since its initial creation date.

Respondent has used the disputed domain name to direct Internet users to a website that is designed to appear substantially similar to that of the commercial websites operated by Complainant. Respondent's website prominently displays Complainant's trademark and logo in the same distinctive color scheme. It displays products that appear to be those of Complainant using the same image composition used on Complainant's websites. The primary difference is that Respondent's website offers to sell the same products at a very substantial discount to the prices listed on Complainant's website, typically offering products at about 20-30 percent of the price offered by Complainant. There is provision for ordering and payment on Respondent's website. There is no commercial relationship between Complainant and Respondent, and the disparity in price between the products offered by Complainant and Respondent is not explained by Respondent.<sup>1</sup>

#### **5. Parties' Contentions**

##### **A. Complainant**

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

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<sup>1</sup>The Panel recognizes that there are various potential explanations for price differentials between the prices offered by an originator manufacturer of products and discount resellers of the same products. However, there is no indication on the record of this proceeding that Respondent has acquired the branded products of Complainant through a legitimate route.

Notably, Complainant contends that it owns rights in the trademark CLARINS and that the disputed domain name is confusingly similar to that trademark.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent is in no way affiliated with Complainant and has not been authorized to use Complainant's trademark in the disputed domain name; (2) Respondent is not making a fair use of the disputed domain name, and; Respondent is using the disputed domain name to divert Internet users for its own commercial gain by taking advantage of Complainant's well-known trademark.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent registered the disputed domain name recently, long after Complainant established well-known trademark rights; (2) Respondent took steps to conceal its identity; (3) Respondent is using the domain name to harvest the usernames and passwords of Internet users; (4) use of the disputed domain name to sell goods in competition with those of the trademark owner is bad faith, and (5) Complainant has recently defended its trademark in other UDRP proceedings.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery to the address used by Respondent in its record of registration could not be completed because Respondent had provided apparently false information. It appears that the email addresses provided by Respondent in its record of registration are non-operational. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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 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.

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 entirety of the mark 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 “usa” and “-outlet”,<sup>2</sup> may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving 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 Respondent. As such, where Complainant, as here, makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent, as here, fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Respondent without authorization has registered and used the disputed domain name to direct Internet users to a website designed to give the appearance of affiliation with Complainant, and to offer presumptively counterfeit products under Complainant’s trademark in competition with Complainant’s offerings. Such use does not constitute fair use and does not otherwise establish rights or legitimate interests in favor of Respondent.

Panels have held that the use of a domain name for illegal activity, here claimed sale of counterfeit goods and impersonation, can never confer rights or legitimate interests on Respondent. [WIPO Overview 3.0](#), section 2.13.1.

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, the Panel notes that Respondent was manifestly aware of Complainant and its trademark when it registered and used the disputed domain name because Respondent established a website making use of Complainant’s trademark and offered unauthorized versions of Complainant’s products for sale.

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<sup>2</sup> While addition of the generic Top-Level Domain “.shop” may be relevant to the element of confusing similarity, it is not material from the standpoint of the Panel’s finding in this proceeding.

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.

Respondent registered and used Complainant's trademark in the disputed domain name for commercial gain to direct Internet users to a website designed to give the appearance of affiliation with Complainant and thereby to create Internet user confusion as to Complainant acting as the source, sponsor, affiliate, or endorser of Respondent's website. Such registration and use by Respondent constitutes bad faith within the meaning of paragraph 4(b)(iv) of the policy.

Panels have held that the use of a domain name for illegal activity, here claimed sale of counterfeit goods and impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <clarinsusa-outlet.shop> be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: October 14, 2024