

ADMINISTRATIVE PANEL DECISION

La Roche-Posay Laboratoire Pharmaceutique and L'Oréal v. Details Not Provided by Registrant and mike simon
Case No. D2024-3406

1. The Parties

The Complainant is La Roche-Posay Laboratoire Pharmaceutique (the "First Complainant") and L'Oréal (the "Second Complainant"), France, represented by Dreyfus & associés, France.

The Respondent is Details Not Provided by Registrant (the "First Respondent"), United States of America ("United States") and mike simon (the "Second Respondent"), United Kingdom.

2. The Domain Names and Registrars

The disputed domain names <larocheposaybeautystore.shop> and <nyxbeautyhub.shop> are registered with Sav.com, LLC and NameSilo, LLC (the "Registrars").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 20, 2024. On August 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <larocheposaybeautystore.shop>. On August 20, 2024, the Registrar Sav.com, LLC 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 (not disclosed) and contact information in the Complaint. On August 27, 2024, the Complainant requested suspension of the proceedings. The Complainant requested reinstitution of the proceedings on September 20, 2024 and requested to add the disputed domain name <nyxbeautyhub.shop> by submitting the first amended Complaint.

On September 25, 2024, the Center transmitted by email to the Registrar NameSilo, LLC a request for registrar verification in connection with the disputed domain name <nyxbeautyhub.shop>. On September 25, 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 (unknown) and contact information.

The Center sent an email communication to the Complainant on October 1, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the

Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed the second amended Complaint on October 3, 2024.

The Center verified that the Complaint together with the amended Complaints 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 October 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 4, 2024. Due to a technical issue, the Center granted the Respondent a five-day period (i.e., through November 13, 2024) to indicate whether it wishes to participate to this proceeding.

The Center appointed Kaya Köklü as the sole panelist in this matter on November 20, 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 dispute involves two Complainants.

The First Complainant is a subsidiary of the Second Complainant. Both are active and widely known in the field of dermo cosmetics and skin care.

The First Complainant is the registered owner of the LA ROCHE-POSAY trademark, which is registered in a large number of jurisdictions. Among others, the First Complainant is the owner of the International Trademark Registration No. 787605, registered on July 12, 2002, for LA ROCHE-POSAY, covering protection for products such as cosmetics and dermatological products as protected by class 3 and 5, and designating many jurisdictions around the world.

The First Complainant operates its main website at "www.laroche-posay.com".

The Second Complainant is the registered owner of the NYX trademark, which is also registered in large number of jurisdictions. Among others, the Second Complainant is the owner of the International Trademark Registration No. 1052316, registered on August 25, 2010, for NYX, covering protection for cosmetical products as protected in class 3, and designating many jurisdictions around the world.

The Second Complainant operates its main website for its NYX products at "www.nyxcosmetics.com".

The dispute further involves two Respondents. The identity of the First Respondent remains unclear as it did not provide a name when registering the disputed domain name <larocheposaybeautystore.shop>. The Registrar only confirmed a location in the United States and an email address of the First Respondent, which uses the disputed domain name <nyxbeautyhub.shop> of the Second Respondent, who is reportedly located in the United Kingdom.

The disputed domain name <larocheposaybeautystore.shop> was registered on July 17, 2024.

The disputed domain name <nyxbeautyhub.shop> was registered on March 30, 2024.

Screenshots, as provided by the Complainants, indicate that the disputed domain name <larocheposaybeautystore.shop> resolves to an online shop purportedly offering cosmetic products under the trademark LA ROCHE-POSAY without any visible disclaimer describing the (lack of) relationship between the Parties.

The disputed domain name <nyxbeautyhub.shop> resolves to a website purporting to offer kids shoes.

Furthermore, as demonstrated by the Complainant in its Complaint, there is a configured Mails Exchange (“MX”) email server for the disputed domain name <nyxbeautyhub.shop>, which enables the Respondent to send and received emails using this disputed domain name.

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 names.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1. Consolidation of Multiple Complainants

The Complaint is filed by the First and Second Complainant on the basis that they are affiliated companies with a common grievance against the Respondents.

Taking into consideration that the Respondents have not rebutted such consolidation, the Panel finds that the Complainants have established a prima facie case that the Complaint can be consolidated based on a common grievance and interest of both Complainants, in particular as the First Complainant is an affiliated company of the Second Complainant. The Panel is convinced that it is fair and equitable in the circumstances of the case to order the consolidation of the Complainants.

Consequently, the Panel accepts the First and Second Complainants in this administrative proceeding and, for the ease of reference, will jointly refer to them as “the Complainant” in the following, whenever appropriate.

6.2. Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant’s request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that according to the provided contact details of the First Respondent by the Registrar, the email address of the First Respondent uses the disputed domain name of the Second Respondent. Hence, the Panel concludes that the Respondents are either the same entity or alter egos of each other, or under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.3. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. [WIPO Overview 3.0](#), section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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 Complainant has shown rights in respect of the LA ROCHE-POSAY and NYX trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the LA ROCHE-POSAY mark or the NYX mark is reproduced within the respective disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, such as “beauty”, “store”, or “hub”, 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 names and the marks 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 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Panel particularly notes that the nature of the disputed domain names comprising the Complainant's LA ROCHE-POSAY or NYX trademarks together with terms related to the Complainant's business, indicates the Respondent's awareness of the Complainant and its trademarks and its illicit intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

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 names such as those enumerated in the Policy or otherwise.

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.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its LA ROCHE-POSAY and NYX trademarks in mind when registering the disputed domain names, particularly considering the composition of the disputed domain names and content of the active websites associated with the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names, which comprise the entirety of the Complainant's trademarks LA ROCHE-POSAY or NYX and, hence, are confusingly similar to the Complainant's trademarks, to target the Complainant in order to generate traffic to its own websites. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

As regards bad faith use, the Panel notes that the overall content and design of the websites associated disputed domain names, including the use of the Complainant's LA ROCHE-POSAY or NYX trademarks, as well as the inherently misleading nature of these disputed domain names. In view of the Panel, this is sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant.

In addition, the Panel believes that the active MX email server for the confusingly similar disputed domain name <nyxbeautyhub.shop> creates a real or implied ongoing threat to the Complainant, since this disputed domain name may be used by the Respondent to mislead customers of the Complainant looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, possibly even for fraudulent activities.

Also, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith use.

All in all, the Panel concludes that the Respondent's registration and use of the disputed domain names 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 names <larocheposaybeautystore.shop> and <nyxbeautyhub.shop> be transferred to the Complainant.¹

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: December 4, 2024

¹In this regard, the Panel notes the Respondent did not provide a registrant or organization name when registering the disputed domain name <larocheposaybeautystore.shop>, nevertheless the concerned Registrar is directed to transfer the disputed domain name to the Complainant irrespective of the named Respondent in this proceeding.