Panel Decision for dispute CAC-ADREU-008414

Case number	**CAC-ADREU-008414**
Time of filing	**2022-11-01 09:05:51**
Domain names	**occitane.eu**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**Laboratoires M&L**

Respondent

Name	**Bernadette Selim Abou Zakhm**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a global, natural and organic ingredient-based cosmetics and well-being products manufacturer and retailer. It is the owner of numerous trademarks for the term L'OCCITANE, including Community marks.

The Respondent is using the disputed domain name in furtherance of a fraudulent email phishing scheme.

The Respondent has not been authorized or licensed to use the Complainant's mark.

A. COMPLAINANT

The Complainant is a global, natural and organic ingredient-based cosmetics and well-being products manufacturer and retailer.

Over the years, the Complainant has experienced constant growth, including in 2020, notwithstanding the significant impact suffered by most companies as a result of COVID-19. Active in all continents of the world, as of March 31, 2020, the Complainant counted 3'486 retail locations and 1'608 stores operated directly by the Group; at the same date, the Group counted 9'347 employees, in comparison with 8'601 in 2018. Its income amounted to K€ 1'644'083, an increase of 15% in comparison with 2019.

The Complainant holds several international verbal trademarks which consist of the term "L'OCCITANE", such as:

• Int. Reg. No. 1006051, notably as European Trademark, registered on 8th August 2008 with a priority date as of April 10, 2008, duly renewed, and designating goods and services in international classes 9, 14, 18, 24, 25, 28, 30, 35, 43 and 44;

• Int. Reg. No. 579875, registered in numerous EU countries with a basis French trademark, registered on 5th November 1991 with a priority date as of May 29, 1991, duly renewed and designating goods in international classes 03, 04, 05, 16 and 21; and

• French Trademark No. 4279139, registered with a priority date as of June 10, 2016, and designating goods and services in international classes 04, 16, 18, 25, 43 and 44.

As a result of its constant success and growth on a worldwide basis, L'OCCITANCE has to be considered as a well-known trademark.

On August 17, 2017, the Respondent registered the domain name . The website attached to the disputed domain name has been for sale since its creation as displayed by several capture screens on Wayback Machine.

On October 27, 2022, the Complainant was informed that a phishing attempt was carried out using the disputed domain name.

B. RESPONDENT

The Respondent did not reply.

DISCUSSION AND FINDINGS

The requirements for transfer of a registered domain name under ".eu" are found in Article 21 of the Public Policy Rules, Commission Regulation (EC) No. 874/22004 of April 28, 2004.

For the purposes of the transfer of speculative and abusive registrations, the Complainant has to prove that the Respondent holds the disputed domain name; that the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law; and that either

(a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or

(b) the domain name has been registered or is being used in bad faith.

In the present case, the Complainant has shown that the Respondent does hold the disputed domain name and that the Complainant does own a Community trademark for the term L'OCCITANE (Int. Reg. No. 1006051, notably as European Trademark, registered on 8th August 2008).

The disputed domain name entirely incorporates the dominant portion OCCITANE of Complainant's trademark, merely adding the letter "L" and an apostrophe. Such changes do not distinguish the disputed domain name from Complainant's mark. See 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), which states "… where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." Although WIPO Jurisprudential Overview 3.0 is based on UDRP case law, it may be applied accordingly in .eu ADR as well. Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's mark under Regulation (EC) No. 874.

The Complainant presents evidence showing that disputed domain name has been offered for sale to the general public. The Complainant does not allege – much less present evidence to show – that the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant. Nor is there any evidence regarding the price at which the disputed domain name is offered for sale. Therefore, the Panel will not consider this matter further.

The Complainant presents evidence showing that the disputed domain name was used in furtherance of a fraudulent phishing scheme. This indicates that the disputed domain name was intentionally used to attract Internet users, for commercial gain, to the Respondent's other on-line location, by creating a likelihood of confusion. This constitutes bad faith use under Regulation (EU) 2019/517 in connection with the ADR Rules applicable as of 13 October 2022.

The Respondent is not commonly known by the disputed domain name and the Complainant has never authorized nor granted any license to the Respondent allowing it to use its trademark in any way. As noted above, the Respondent's use of the disputed domain name does not demonstrate any intent to use or preparations to use it in connection with a bona fide offering of goods or services.

In accordance with 10(b) of the ADR Rules, the Panel shall draw such inferences as it considers appropriate from the Respondent's failure to reply.

In the present case, the Panel infers from the Respondent's silence that it has no valid arguments to oppose to the Complainant.

Thus, the Panel finds that the Respondent registered the disputed domain name without rights or legitimate interests, and used it in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name be transferred to the Complainant.

PANELISTS

Name	Richard Hill

DATE OF PANEL DECISION 2022-12-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name:

II. Country of the Complainant: France, country of the Respondent: Canada

III. Date of registration of the domain name: 31 August 2017

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1.word trademark registered in France, Int. Reg. No. 1006051, notably as European Trademark, registered on 8th August 2008, designating goods in international classes 03, 04, 05, 16 and 21

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: domain name used for phishing

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: domain name used for phishing

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. If transfer to Complainant, is Complainant eligible? Yes