

ADMINISTRATIVE PANEL DECISION

Olaplex, Inc. v. Bui Xuan Hoa
Case No. D2023-4178

1. The Parties

The Complainant is Olaplex, Inc., United States of America (“United States”), represented by 101domain.com, United States.

The Respondent is Bui Xuan Hoa, Vietnam.

2. The Domain Names and Registrar

The disputed domain names <olaplexvietnam.site> and <olaplexvn.com> are registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2023. On October 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Information not available on WHOIS) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 2023 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 October 18, 2023.

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 October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on November 23, 2023. 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 has been operating in the hair care industry since 2014.

The Complainant is the owner to the following trademarks:

- International Trademark registration number 1187399 for OLAPLEX, registered on November 27, 2013, in class 3.

- United States Trademark registration number 4,553,436 for OLAPLEX, registered on June 17, 2014, in class 3.

The disputed domain names were registered as follows:

<olaplexvietnam.site> on August 2, 2023, and;
<olaplexvn.com> on May 24, 2023

Although at the time of this Decision the disputed domain names do not resolve to any active website, the evidence attached to the Complaint indicates that the disputed domain names used to direct to an active website apparently offering the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to Complainant's trademark as they use the entirety of Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain names.

The Complainant has not licensed nor allowed Respondent to use the Complainant's trademarks for any purpose.

The Respondent's website displayed copyrighted images in order to sell counterfeit products and impersonate Complainant's company.

The Respondent has registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Finding

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain names have been registered and are being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks OLAPLEX on the basis of its multiple trademark registrations including its international trademark registration as well as in the United States of America. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of the [WIPO Overview 3.0](#). The Respondent's incorporation of the Complainant's OLAPLEX trademark in full in the disputed domain names is evidence that the disputed domain names are confusingly similar to the Complainant's mark.

While the addition of the terms "vietnam" and its acronym "vn" may bear an assessment on the analysis regarding the second and third elements of the Policy, the Panel notes that such additional terms do not prevent a finding of confusing similarity between the disputed domain names and the Complainant's OLAPLEX mark because the Complainant's OLAPLEX mark remains clearly recognizable in the disputed domain names. As noted in [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element." Furthermore, the addition of the generic Top-Level Domain "gTLD" ".site" and ".com" are viewed as a standard registration requirement and as such are typically disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain names. The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain names because the Respondent's name is "Bui Xuan Hoa" which has no apparent connection with the OLAPLEX trademark and is located in Vietnam.

The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain names used to direct to a commercial website that allegedly offered the Complainant's goods at discounted prices. The Panel notes that the apparent sales of the Complainant's goods at discounted prices may indicate that the products are potentially counterfeit products and, therefore, can never constitute a *bona fide* offering of goods. But even if the products offered through the disputed domain names were to be original, apart from the website at the disputed domain names displaying copyrighted images from the Complainant, the lack of any disclaimer as to the relation with or authorization of the Complainant, exacerbates the user's confusion as to the website's affiliation to the Complainant.

Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain names.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b). The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain names and that paragraph 4(a)(ii) of the Policy is satisfied. The Panel concludes that the Respondent deliberately chose to include the Complainant's OLAPLEX trademark in the disputed domain names, in order to achieve commercial gain by misleading third parties, and that such use cannot be considered as a legitimate noncommercial or fair use. The Panel further finds that the disputed domain names carry a risk of implied affiliation with the Complainant. The additional terms "vietnam" and "vn", corresponding to the name of an Asian country and its acronym, is misleading regarding the location or place for selling the products or services. See section 2.5.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain names. In this case, the Complainant submits that at the dates of registration of the disputed domain names the Respondent knew or should have known of the Complainant's mark OLAPLEX considering the global renown of the Complainant's prior mark and the website content targeting the Complainant's logos and products. The Panel takes note of the construction of the disputed domain names, which combines the OLAPLEX mark with the geographic terms "vietnam" and "vn", as well as the fact that the disputed domain names used to direct to a website that contains the Complainant's logo and allegedly offered the Complainant's trademarked goods. The Panel is satisfied that by directing the disputed domain names to a commercial website allegedly offering the Complainant's goods, and that such use do not constitute a *bona fide* offering of goods and services as detailed above, the Respondent has intentionally attempted 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 or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)).

Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. The Complainant points out that the Respondent is hiding its identity behind a Whois privacy service. It is well established that this, too, can be a further indicator of bad faith in certain circumstances. Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the inherently misleading disputed domain names.

Consequently, the Panel finds that the disputed domain names were registered and used by the Respondent in bad faith within Paragraph 4(a)(iii) 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 <olaplexvietnam.site> and <olaplexvn.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: December 7, 2023