Decision for dispute CAC-UDRP-102512

Case number	CAC-UDRP-102512
Time of filing	2019-05-29 11:00:10
Domain names	loccitanecode.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Laboratoires M&L

Complainant representative

Organization	Brandstock Domains GmbH

Respondent

Organization	Swaqny

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceeding pending or decided which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has provided sufficient documentary evidences to show its intellectual property rights in the "L'OCCITANE" sign (hereinafter L'Occitane Trademark) for the purposes of the Policy.

TRADEMARKS

The Complainant holds a large portfolio of trademarks registered in numerous jurisdictions, amongst which:

- International trademark L'OCCITANE No. 1006051 registered on 8th August 2008, duly renewed, and designating goods and services in international classes 9, 14, 18, 24, 25, 28, 30, 35, 43 and 44;
- International trademark L'OCCITANE No. 579875 registered on 5th November 1991, duly renewed and designating goods in international classes 03, 04, 05, 16 and 21;
- International trademark L'OCCITANE No. 1330027 registered on 28th June 2016 and designating goods and services in international classes 04, 16, 18, 25, 43 and 44.

DOMAIN NAMES

The domain name LOCCITANE.COM is used as the Complainant's official website.

FACTUAL BACKGROUND

The Complainant is part of the L'Occitane Group. The L'Occitane Group is a global, natural and organic ingredient-based cosmetics and well-being products manufacturer and retailer. The Group has six brands (L'OCCITANE EN PROVENCE, MELVITA, ERBORIAN, L'OCCITANE AU BRÉSIL, LIMELIFE BY ALCONE and ELEMIS) in its portfolio and is committed to developing and retailing high quality products that are rich in natural and organic ingredients of traceable origins and respect the environment.

In 2015, the L'Occitane Group counted 2,797 retail locations on all continents throughout the world, with 1,384 owned retail stores. The Group employs more than 8,000 people around the world and generated a revenue of more than 1 billion US dollars in 2015.

In 2015, net sales were €1,177.9 million, a growth of 11.7%. At constant exchange rates, sales growth was 10.3%. Growth was primarily driven by China, Japan, Hong Kong, and the United States.

The Complainant holds several trademarks in the term "L'OCCITANE" registered worldwide.

The disputed domain name was registered by an Egyptian corporation, Swaqny, with privacy service on 16 May 2019, hence well after the registration of the L'Occitane Trademark.

The disputed domain name redirects to a website in Arabic language displaying the device mark of the Complainant, images of the Complainant's products and discount codes or coupons to purchase such products, as well as links to the Complainant's official website.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT'S CONTENTIONS

On the first UDRP element the Complainant contends that the disputed domain name is highly similar to the Complainant's earlier trademarks, since it reproduces the L'OCCITANE Trademark in its entirety with the exception of the apostrophe, which is not a valid character for domain name registration, the addition of the generic term "code", which refers to discount code or coupon, and of the gTLD (in this case the suffix .com), which is a technical requirement of the registration. Such likelihood of similarity is enhanced by the content of the website to which the domain name redirects.

On the second UDRP element the Complainant argues that the Respondent has nothing to do with the Complainant, nor has been authorized or licensed to use the L'Occitane Trademark or to register or use the disputed domain name. The disputed domain name does not correspond to the Respondent's name, nor is this latter commonly known by the disputed domain name. The Respondent has not acquired any trademark or service mark rights related to the L'Occitane term. Considering the content of the website to which the domain name redirects, there is no fair or non-commercial use of the disputed domain name.

On the third UDRP element the Complainant affirms that the disputed domain name was registered and is being used in bad faith. Taken into account of the distinctiveness and the reputation of the L'Occitane Trademark acquired due to the wide-spread extensive use, it is unlikely that the Respondent had no knowledge of the Complainant's mark at the time of the registration of the disputed domain name. The Complainant has submitted an extract of a search carried out by the same on the well-known search engine Google with the keywords "L'OCCITANE" and alleges that had the Respondent performed a

basic search on Google, it should have yielded obvious references to the Complainant. Hence, according to the Complainant, it is most likely that the Respondent registered and has used the disputed domain name having in mind the Complainant and the L'Occitane Trademark and with the clear intention to take advantage of the reputation of the same by creating a likelihood of confusion between such mark and the disputed domain name. Such intention is confirmed by the content of the website to which the domain name redirects: it displays the device mark of the Complainant, images of the Complainant's products and discount codes or coupons to purchase such products, as well as links to the Complainant's official website.

Therefore, the Complainant requests the transfer of the disputed domain name.

RESPONDENT'S CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

REQUIREMENTS OF PARAGRAPH 4(A) OF THE POLICY

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements to obtain the transfer or the revocation of the domain name:

(1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(3) the disputed domain name has been registered and is being used in bad faith.

1. THE COMPLAINANT’S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has proved to hold rights in the L'Occitane Trademark. The disputed domain name incorporates the entirety of the Complainant mark and differs from it by merely omitting the apostrophe (which is not a valid character for the domain name registration), adding the generic and descriptive term "code" and the generic top-level domain name ".com".

In assessing identity or confusing similarity the UDRP panels agree that, in cases where the relevant trademark is recognizable within the disputed domain name, the deletion of punctuation (e.g. apostrophe or hyphen) or the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see WIPO Case D2000-0321 chichis.com; NAF Case no. FA140598

daddysjunkymusic.com; paragraph 1.7 WIPO Overview 3.0).

It is also well-established UDRP case law that panels usually ignore the top-level domain for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register and use the disputed domain name, nor is affiliated to the Complainant in any form.

The disputed domain name was registered on 16 May 2019 by Swaqny, an Egyptian corporation. There is no evidence that the Respondent has been commonly known by the disputed domain name.

The disputed domain name redirects to a website in Arabic language displaying the device mark of the Complainant, images of the Complainant's products and discount codes or coupons to purchase such products, as well as links to the Complainant's official website. Such use of the domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

3. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Respondent registered the disputed domain name which is to be considered confusingly similar to Complainant's mark, since it wholly incorporates the L'Occitane Trademark. The mere deletion of the apostrophe (which is not a valid character for the domain name registration), addition of the generic and descriptive term "code" (which refers to discount code or coupon for purchase of products) and the gTLD ".com" (which is a technical requirement of the registration) are not sufficient elements to escape the finding of confusing similarity between the disputed domain name and the Complainant's mark.

Given the distinctiveness and reputation of the Complainant's prior mark, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such well-known mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

The disputed domain name redirects to a website in Arabic language displaying the device mark of the Complainant, images of the Complainant's products and discount codes or coupons to purchase such products, as well as links to the Complainant's official website.

Hence, this Panel finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or a product or service on its website (Paragraph 4(b)(iv) of the Policy).

The Respondent has not submitted a Response in this administrative proceeding providing any evidence of actual or contemplated good faith use.

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LOCCITANECODE.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2019-07-11

Publish the Decision