

DECISION OF THE THIRD-PARTY DECIDER

CHARLOTTE TILBURY / ZHAO KE

Case no. 444130 / charlottetilbury.be

1. The Parties

1.1. Complainant: CHARLOTTE TILBURY TL LIMITED
8, Surrey Street
WC2R 2ND LONDON
UNITED KINGDOM

Represented by :

Mr Steven LANE
Director – LANE IP LIMITED
The Forum, St Paul's, 33, Gutter Lane
EC2N 2DG LONDON
UNITED KINGDOM

Hereafter referred to as “the Complainant”

1.2. Domain name holder: Mr Zhao KE
Pudong, QiAi Road, n° 161
201210 SHANGHAI
CHINA

Hereafter referred to as “the Respondent”

2. Domain name

Domain name: “charlottetilbury.be”

Registered on : 9th September 2020

Hereafter referred to as “the Domain Name”

3. Procedure

On 30 March 2021, the Complainant filed a complaint concerning the Domain name with CEPANI, the Belgian Centre for Arbitration and Mediation, in accordance with the Cepani rules for Domain Name Dispute Resolution (hereafter to as "the Rules") and the Dispute Resolution policy of DNS Belgium, incorporated in its General terms and conditions for ".be" domain name registration (hereafter referred to as the "Policy").

On 28 April 2021, CEPANI appointed the undersigned, Mr Jean-Christophe Lardinois, as a Third-Party Decider (hereafter referred to as the "Third-party Decider") to settle the dispute involving the Domain name in question.

The deliberations were closed on 5 May 2021.

The Respondent did not file a response to the Compliant.

In accordance with article 6.4. of the Rules, this decision is based solely on the Complaint including the Complainant's exhibits.

4. Factual Background information

Charlotte Tilbury Beauty (the Complainant's parent company) operates a global skincare, cosmetics and beauty business under the brand "CHARLOTTE TILBURY" and has its official website at <https://charlottetilbury.com> operated since at least November 2012

The business was founded in 2013 by Charlotte Tilbury, a makeup artist, who is a Director of the Complainant.

The Complainant is the owner of several "CHARLOTTE TILBURY" trademarks covering many territories (Europa, United States, Australia, United Kingdom, China, Hong Kong ...). The brand has a physical presence in many countries in the world and is available online in over 70 countries including China.

In addition, the Complainant has a significant presence on social media sites such as Facebook, Twitter, Instagram and Youtube which have a worldwide following.

Having reviewed the complaint and its annexes submitted by the Complainant, the Third-Party Decider finds that the above facts have been established.

5. Position of the parties

5.1. Position of the Complainant

The Complainant requests the transfer of the Domain Name and submits that the three cumulative conditions for such transfer are met :

(i) The Domain Name is identical or confusingly similar to Complainant's registered trademarks "CHARLOTTE TILBURY" because it incorporates, in its entirety, the Complainant's mark "CHARLOTTE TILBURY", with the mere addition of the suffix ".be" which is non-distinctive and not relevant for assessing identity between the Domain Name and the Complainant's earlier rights.

(ii) The Respondent has no rights or legitimate interests in the Domain Name. The Complainant asserts that Domain name holder is not commonly known or referred to as CHARLOTTE TILBURY and that the Domain name holder is not affiliated with, licensed or authorized by the Complainant (nor Charlotte Tilbury Beauty) to use its marks and the Complainant does not endorse or sponsor the Domain name holder's use of the Domain Name.

(iii) The Domain Name has been registered or is being used in bad faith. The Complainant indicates that the Domain Name was acquired or registered primarily for the purpose of selling the Domain Name to the Complainant or to a competitor of the Complainant for a price that exceeds the costs that the Domain name holder can show are directly related to the acquisition of the domain name

5.2. Position of the Domain name holder

The Domain name holder did not file any response or observations to the complaint.

6. Discussion and findings

Pursuant to Article 16.1 of the *CEPANI rules for domain name dispute resolution*, the Third-Party Decider shall rule on domain name disputes with due regard for the Policy and the CEPANI rules for domain name dispute resolution.

Pursuant to Article 10b (1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must provide evidence of the following:

(i) *"the Domain name holder is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and*

(ii) the Domain name holder has no rights or legitimate interests in the domain name; and

(iii) the Domain name holder's domain name has been registered or is being used in bad faith."

6.1. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

The Complainant has established the existence of several "CHARLOTTE TILBURY" trademarks in which it has IP rights.

Moreover, the trade name of the Complainant is "CHARLOTTE TILBURY".

It is also obvious that the Respondent's Domain Name is identical or confusingly similar to the CHARLOTTE TILBURY trademarks (and the CHARLOTTE TILBURY trade name) of the Complainant.

The relevant part of the Domain Name is "Charlottetilbury" as the ".be" extension shall not be taken into account, pursuant to the well-established case law of CEPANI (see e.g : CEPANI cases n° 44082 and n° 444121).

The Respondent does not dispute this.

As a consequence, the first condition of article 10, b), 1) "I" of the Policy is fulfilled.

6.2. The Domain name holder has no right or legitimate interests in the Domain Name

According to article 10, b) 3 of the Policy, the Domain Name holder's rights or legitimate interest to the Domain Name can be proved by certain circumstances.

Article 10 b) 3 of the Policy gives a non-exhaustive list of such circumstances:

- *"Prior to any notice of the dispute, the registrant used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or*
- *The registrant (as an individual, business or other organisation) has been commonly known by the domain name, even if he has acquired no trademark; or*

- *The registrant is making a legitimate and non-commercial or fair-use of the domain name, without intent to misleadingly divert consumers, for commercial gain or to tarnish the trademark, tradename, social name or corporation name, geographical destination, name of origin, designation of source, personal name or name of the geographical entity at issue."*

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant asserts that the Respondent has no rights of legitimate interests in respect of the disputed domain name, and he is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license, permission nor authorization has been granted to the Respondent to make any use of the Complainant's CHARLOTTE TILBURY trademarks, or apply for registration of the Domain Name by the Complainant.

As a consequence, the Respondent fails to use the Domain Name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use.

Since the Complainant reasonable asserts that the Respondent does not have any rights or legitimate interests, the burden of proof lies on the respondent, who has to prove that he actually does have rights or legitimate interests in the Domain Name.

The Respondent did not demonstrate his rights or legitimate interests to the Domain Name by any of the abovementioned elements. The Respondent has indeed not filed any answer and has therefore not provided any explanation or evidence to establish his rights and /or legitimate interests in the Domain Name, so that Complainant's contentions in this respect are not contradicted.

Therefore, it must be concluded that the second condition under article 10, b), 1) ii of the Policy is also fulfilled.

6.3. The Domain name holder's Domain Name has been registered or is being used in bad faith

Bad faith must be reasonably proven and may be proved by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith (see e.g. CEPANI cases n° 44171 and 44441).

According to article 10, b) 2) of the Policy, the evidence of such in bad faith registration or use of a domain name can inter alia be demonstrated by the following circumstances:

- *"The domain name was registered primarily for the purpose of disrupting the business of a competitor*
- *The domain name was intentionally used to attract for commercial gain, internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademarks, tradename, registered name or company name , geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location.*

- *The registrant has registered one or more personal names without the existence of a demonstrable link between the registrant and the registered domain names."*

According to the Complainant, the Domain name has been offered for sale through the platforms "Dan.com" (through "Sedo.com"), which shows that the Domain name holder has registered the Domain Name corresponding to the Complainant's trademarks in order to sell it for commercial gain purpose only.

It appears that the Respondent has not made any legitimate use of the Domain name since its registration.

Finally, the Complainant submits that the Domain Name holder is known in many UDRP decisions for this pattern of conduct (see WIPO Cases n° D2011-1943 - drmartensstore.com - DNL2015-0062 - rolls-roycemotorcars.nl - D2011-1608 - lorealprofessionnel.info and garnier-usa.com , ...).

Without any response from the Respondent, it is sufficiently evidenced that the Domain Name was registered and is being used in bad faith. As a consequence, also the condition stated in Article 10, b), 1 iii of the Policy is fulfilled.

7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-Party Decider hereby rules that the domain name registration for the "**Charlottetilbury.be**" Domain Name is to be transferred to the Complainant.

Brussels, 14 May 2021

Jean-Christophe LARDINOIS
The Third-Party Decider

