

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2022-0009

Also in PDF C2022-0009

1. The Parties

The Complainant is L'Oréal, having its office at 14 rue Royale, 75008, Paris, France. The Complainant has initiated the Complaint vide their authorized representative, Dreyfus & associés, at 78, avenue Raymond Poincaré, 75116, Paris, France.

The Respondent's name is Irfan Shaukat with his address at House No. 24, Block No.2, Sector B1, Township Scheme, Lahore, and Telephone No: +92 334 4416933.

2. The Domain Names and Registrar

The domain name in dispute is <cerave.pk>, hereinafter referred to as the Disputed Domain Name ["the DDN"]. Vide email dated Monday 20 June 2022, PKNIC has informed DNDRC that the Agent Organization through which the registration was applied is serversea, Office S-1, 1-B, Grace Centre, Lahore, Pakistan, and its Create Date was February 18, 2021, with an Expire Date of February 18, 2023.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 17 June 2022.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 21 June 2022 informing the Respondent that if a Response were not received 10 days from the notification, the dispute would be proceeded ex-parte. DNDRC awaited the submission by the Complainant of the Complaint as per the prescribed forms also available at www.dndrc.com/downloads. The Respondent was also issued reminder notifications on 30 June

2022 and 13 July 2022. The Respondent failed to provide a response within the stipulated time period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Mr. Raja Abubakar as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <cerave.pk>.

PKNIC has confirmed via their email dated 20 June 2022 that the DDN has been registered by the Respondent named in the Complaint and that their email address is irfanmit2@gmail.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are produced below:

Complainant, L'Oréal, is a French industrial group specialized in the field of cosmetics and beauty and is the first cosmetics group worldwide.

Created in 1909 by a French chemist by the same name, L'Oréal is today one of the world's largest groups in the cosmetics business. It has a portfolio of 36 brands, employs 86,000 employees, and is present in 150 countries (Annex 3).

L'Oréal is richly endowed with a portfolio of international brands that is unique in the world and that covers all the lines of cosmetics: hair care, coloring, skin care, make-up and perfume. Complainant's brands are managed within the group by divisions that each have expertise in their own distribution channel. This organization is one of L'Oréal's major strengths. It makes it possible to respond to every consumer's expectation according to their habits and lifestyle but also to adapt to local distribution conditions, anywhere in the world (Annex 3).

L'Oreal announced the signing of a definitive agreement with Valeant to acquire the skincare brands CeraVe, AcneFree and Ambi for a cash purchase price of 1.3 billion US dollars. CeraVe was founded in 2005 and offers a range of advanced skincare products,

specifically cleansers, moisturizers, sunscreens, healing ointments and a dedicated baby line. The CeraVe story began in 2005 after experts noticed that many skin conditions such as acne, eczema, psoriasis and dry skin all had one thing in common: a compromised skin barrier. Developed with dermatologists, CeraVe offers a complete line of skincare products that contain three essential ceramides enhanced with a revolutionary delivery system to help restore the skin's natural protective barrier (Annex 3).

CeraVe, makes high-quality cleansing and moisturizing products accessible to a wide number of consumers around the world. According to testimonials and clinical studies these products have made a significant impact on the quality of consumers' daily lives. Thanks to the partnership with dermatologists, CeraVe enables everyone to fully live the comfort of healthy skin (Annex 3).

*Developed with dermatologists, CeraVe's mission is to restore and maintain skin barrier for all through efficacy, safety, compliance and accessibility. The skincare products contain a blend of three essential ceramides (ceramides 1, 3, and 6-II), fatty acids and hyaluronic acid to restore skin barrier function and sustain long-term moisturization with just one use. CeraVe is the *No. 1 dermatologist recommended moisturizer brand in the United States and now available in over 40 countries worldwide (Annex 3).*

Complainant's efforts to resolve this matter amicably

Complainant became aware of Respondent's registration of the domain name <cerave.pk>, which reproduces Complainant's trademark CERA VE in its entirety, and does not associate it with any generic term that could reduce the risk of confusion. On the contrary, the composition of the domain name and the mere addition of the extension ".pk" can mislead Internet users into believing the disputed domain name is endorsed by Complainant or that it will direct them to the official website promoting and selling Complainant's products intended for the Pakistani market.

Since its detection, the domain name <cerave.pk> resolves to a fake website that reproduces Complainant's trademark and its visuals mimicking its official website, offering cosmetic products under the Complainant's trademark for sale with a discount, which are likely to be counterfeit goods. The infringing website displayed social media links offering CeraVe products for sale by providing a WhatsApp number for placing the order and implying they are imported from UK (Annex 1).

In addition, the domain name <cerave.pk> is configured with the following email servers: mx1.emailsrvr.com 108.166.43.1 and mx2.emailsrvr.com 184.106.54.2, increasing in that way the risk of potential phishing actions (Annex 1).

Before starting the present proceeding, Complainant made some efforts to resolve this matter amicably.

In order to secure the situation, Complainant sent notifications to the hosting and DNS providers, simultaneously, asserting its trademark rights and requesting the deactivation of the infringing website, the deletion of the DNS servers and the blocking and deletion of the corresponding user account, on March 8 and 9, 2022. After several reminders, the hosting company responded by claiming they do not control the content posted on users' web sites and confirmed they forwarded Complainant's request to their customer.

No further response was received (Annex 6).

After several reminders and exchanges, the DNS provider failed to comply with Complainant's request, as well stating the only way they can remove a domain is with a court order (Annex 6).

In addition, Complainant sent a notification to Instagram requesting the blocking of the account <https://www.instagram.com/ceravePK/> that was displayed on the website. Instagram complied with Complainant's request and removed the account promptly (Annex 6).

In view of the seriousness of the situation, and having not obtained a resolution to this matter, Complainant contacted PKNIC in order to reach the registrant of the infringing domain name and try to reach an amicable solution. However, the registry did not disclose the registrant's data and advised initiating a dispute (Annex 6).

Having exhausted all the resources available, and considering Respondent's details are not disclosed, Complainant has not been able to conclude the case in a satisfactory manner.

As no amicable settlement could be found, despite Complainant's best efforts, Complainant had no other choice but to initiate an DNDRC procedure against Respondent based on the infringing nature of the domain name and the website it resolves to, impersonation and

fraudulent practices in order to obtain the transfer of the disputed domain name and to eradicate any additional risk of illegal and infringing use of the disputed domain name.

The Complainant seeks the following remedies:

- To identify the current owner of the Domain Name; and
- To transfer the Domain Name's registration from the said owner to Complainant.

After submission of the Complaint, the Complainant confirmed that the Trade Marks Registry had issued certificates of registration for the trademark "CERAVE" to the Complainant and provided copies of the same.

B. Respondent

The Complaint was duly served to the Respondent, but the Respondent did not submit any response. Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint.

Therefore, the Panel proceeded with the matter ex-parte.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006, version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*
- iv. *Registration and use of the domain name in bad faith (a UDRP criteria).*

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*
- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of

PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the “Penal Code”) or any applicable criminal law?

The complainant has not provided a substantive response to this point. However, after consulting the application and attached annexes it can be deduced that the Respondents registration of the Disputed Domain Name (DDN) is illegal, unlawful, or otherwise invalid.

The DDN incorporates the word “Cerave” which is the registered trademark of the Complainant. Details and evidence of the Complainant’s trade mark registrations are provided in the attached Annexes.

Secondly, the Complainant has been using “Cerave” for Web hosting services since 1998 and has registered it well before the DDN was the registered. It is apparent that the Respondent had knowledge of the Complainant's rights at the time of registration of the Disputed Domain Name.

The Respondent has not provided a substantive response.

The Complainant has provided copies of certificates of registration issued by the Government of Pakistan indicating that it has registered the word mark “Cerave” in Pakistan. The Panel finds that the Complainant has submitted sufficient evidence that it has trademark rights in the word “Cerave”. The DDN does prima facie incorporate in its entirety the registered trademark of the Complainant. In the view of the Panel, the DDN therefore infringes upon the trademark of the Complainant.

In the absence of any information provided by the Respondent, the Panel is unable to infer whether the Respondent also has rights to the term “CERAVE” that would indicate that the registration of the DDN by the Respondent was bona fide.

In view of the findings of the Panel that the DDN, which incorporates a registered trademark of the Complainant in its entirety, constitutes an infringement of the trademark of the Complainant in its entirety, the Panel, relying on the findings in *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), also finds that the registration will contravene relevant provisions of the Pakistan Penal Code.

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

Complainant and its trademark CERAVE enjoy a worldwide reputation. Complainant owns numerous CERAVE trademark registrations around the world.

Complainant is in particular the owner of the following CERAVE Trademark applications and registrations (Annex 4):

- Pakistani Trademark application CERAVE No. 600258, dated January 22, 2021, covering goods in class 3;*
- European Trademark CERAVE No. 016162752, dated December 14, 2016, covering goods in class 3;*
- International Trademark Registration CERAVE No. 1365989 dated June 15, 2017, designating inter alia Egypt, Switzerland, Singapore, Vietnam and covering goods in class 3;*

In addition, Complainant operates (through its US subsidiary), among others, the following domain name reflecting its trademark in order to promote its services (Annex 5):

- <cerave.com> registered on April 28, 1998.*

The disputed domain name <cerave.pk> is virtually identical to Complainant's prior trademarks CERA VE.

Indeed, the disputed domain name reproduces in its entirety Complainant's trademark CERA VE. In many WIPO decisions, Panels considered that the incorporation of a well-known trademark in its entirety may be sufficient to establish that the domain name is identical or confusingly similar to a complainant's trademark (WIPO Case No. D2011-1627, L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang, WIPO Case No. D2010-1059, Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin and WIPO Case No. D2000-0113, The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.).

Additionally, in many WIPO decisions, it is well established that "Where a domain name incorporates the entirety of a trademark, or 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" (WIPO Case No. D2011-1627, L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang, WIPO Case No. D2010-1059, Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin and WIPO Case No. D2000-0113, The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.). See section 1.7 of the WIPO Jurisprudential Overview 3.0.

Furthermore, the structure of the domain name <cerave.pk> enhances the false impression that this domain name is somehow officially related to Complainant, as it may be perceived as the official domain name differing only in the extension. Indeed, the disputed domain name is likely to confuse Internet users into believing that the domain name will direct them to the official website or to a page providing information on Complainant's cosmetic products intended for the Pakistani market.

Complainant has used the trademark CERA VE in connection with specific cosmetic products around the world (Annexes 3 and 4), including in Pakistan. Consequently, the public has learnt to perceive the goods offered under this trademark as being those of Complainant. Therefore, the public would reasonably assume that the disputed domain name would be owned by Complainant or at least assume that it is endorsed or in other way related to Complainant.

The ccTLD <.pk> is insufficient to distinguish the disputed domain name from Complainant's trademarks. Complainant's trademarks are the most prominent part of the disputed domain name and the <.pk> indication is not distinctive.

The extension “.pk” or any other gTLD or ccTLD is not to be taken into consideration when examining the identity or similarity between Complainant’s trademarks and the disputed domain name.

It is well established that the addition of the TLD suffix does not affect the likelihood of confusion merely because it is necessary for the registration of the domain name itself (WIPO Case No. DTV2011-0003, IndiaMART InterMESH Limited v. Personal, Manoj Nair/WhoisGuard and WIPO Case No. D2011-0775, L’Oréal v. Guowei Hai Gui).

Further, the disputed domain name incorporates Complainant’s trademark in its entirety, followed only by the country code top level domain (“ccTLD”) for Pakistan, “.pk”. This addition does not render the disputed domain name distinctive from the Complainant’s trademark. This is likely to increase the likelihood of confusion for Internet users who may wrongly believe the disputed domain name correspond to a website of Complainant. Prior cases have held that the incorporation of an ISO or ccTLD code is a non-distinctive element, which does not avoid confusing similarity (WIPO Case No. D2010-1965, LEGO Juris A/S v. pcmaniabg, Paisiy Aleksandrov). Many Panels have held that ccTLD suffix fails to distinguish the disputed domain name from Complainant’s mark (WIPO Case No. DCO2010-0033, Oceaneering International Inc. v. Sumer Kolcak).

Accordingly, by registering said domain name, Respondent has created a likelihood of confusion with Complainant’s trademark. It is likely that the domain name could mislead Internet users into thinking that it is, in some way, associated with Complainant.

For all of the above-mentioned reasons, the domain name in dispute is confusingly similar to the trademark CERAVE in which the Complainant has rights, and therefore the condition of Paragraph 4(a)(i) is fulfilled.

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It is an established principle that the incorporation of a Complainant’s trademark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name.

The Complainant has provided sufficient information, including annexing evidence of the same, that the Complainant has rights in the trademark “CERAVE”. The addition of the ccTLD “.pk” would also not prevent the finding of confusing similarity.

The Respondent has not submitted any contention. In the absence of any valid explanation of how

the DDN is not confusingly similar to the trademark of the Complainant, the Panel finds confusing similarity between the DDN and the Complainant's trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

"Proved based on all evidence presented" that "shall demonstrate" the Respondent's "rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii)."

Paragraph 4(a)(ii) states that:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Complainant has contended the following:

Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. Furthermore, Respondent cannot claim prior rights or legitimate interest in the domain name, as the CERAVE trademarks precede the registration of the disputed domain name for years (Annexes 1 and 4).

Respondent is not commonly known by the disputed domain name or the name "CERAVE", in accordance with paragraph 4(c)(ii) of the Policy. There is simply no evidence that Respondent may be commonly known by the name CERAVE (Annex 1).

The domain name <cerave.pk> is virtually identical to the Complainant's CERAVE trademark that Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. Panels have found that "domain names identical to a Complainant's trademark carry a high risk of implied affiliation". The adjunction of the extension ".pk" increases the risk of confusion since Internet users are likely to believe that the said domain name will direct them to the official website providing information on Complainant's products intended for the Pakistani market (See section 2.5.1 of the WIPO Jurisprudential Overview 3.0).

Moreover, Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy. As mentioned, the disputed domain name, which entirely incorporates Complainant's trademark, resolves towards a fake website that reproduces Complainant's trademark and its visuals, offering alleged CERAVE products for sale with a discount that are most likely to be counterfeit goods. This conclusion is based on the fact that Cerave products are currently not sold in Pakistan (Annexes 1 and 3). Consequently, Respondent fails to show any intention of non-commercial or fair use of the disputed domain name. It is most likely to be believed that Respondent has no legitimate interest or rights in the said domain name.

Respondent has never been given the authorization from Complainant for developing such a website which imitates Complainant's official website by reproducing its visuals, logo and structure, and that will inevitably lead Internet users into wrongly believing this is an official website intended for the Pakistani market. Even more so, considering the disclaimer at the bottom of the page, reading: "This site does only support the Pakistani Customers." Such imitation of Complainant's websites cannot provide Respondent with rights or legitimate interests over the domain name (WIPO Case No. D2010-0746, Birkenstock Orthopädie GmbH & Co KG v. Chen Yanbing).

Respondent is thus not accurately disclosing its relationship with the trademark by falsely suggesting it is the trademark owner and its website is an official website, which is contrary to the Policy (WIPO Case No. D2001-0903, Oki Data Americas, Inc. v. ASD, Inc).

In previous decisions, Panels found that in the absence of any license or permission from the Complainant to use such widely-known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No.

D2010-0138, LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master).

Respondent also fails to show any intention of non-commercial or fair use of the disputed domain name. It is most likely to be believed that Respondent has no legitimate interest or rights in the said domain name, as they are using the domain name with intent for commercial gain to misleadingly divert consumers from Complainant's official website.

Furthermore, an email server has been configured on the disputed domain name <cerave.pk> and thus, there might be a risk that Respondent is engaged in a phishing scheme (Annex 1). So, the disputed domain name is not used in any type of legitimate business or services.

Finally, given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is virtually identical to Complainant's trademark, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.

For all of the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests in respect to the domain name in dispute under Paragraph 4(a)(ii) of the Policy.

As has been previously adopted by the discussions and findings in WIPO Authorities, it is for the Respondent to rebut the allegations put forth by the Complainant. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be extremely difficult, if not impossible, for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the Disputed Domain Name, the Respondent was obliged to respond and submit evidence with respect to the same.

The Respondent has failed to respond, and resultantly satisfy the Panel that the Respondent is commonly known by the name of "cerave.pk" or has any legitimate interest in the DDN.

In the absence of any information provided by the Respondent in support of his legitimate interest in the DDN, the Panel finds that the Respondent does not have rights to or a legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

In light of the above, the Panel finds that the Respondent does not have rights or a legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

1) Registration in bad faith

Bad faith can be found where Respondent “knew or should have known” of Complainant’s trademark rights and, nevertheless registered a domain name in which it had no rights or legitimate interest (WIPO Case No. D2009-0320, Research in Motion Limited v. Privacy Locked LLC/Nat Collicot; WIPO Case No. D2009- 0113, The Gap, Inc. v. Deng Youqian).

It is implausible that Respondent was unaware of Complainant when it registered the disputed domain name.

Firstly, Complainant is well-known throughout the world (Annex 3). In this regard, many panels have previously acknowledged Complainant’s reputation worldwide, making it unlikely that Respondent was not aware of Complainant’s rights in said trademark (WIPO Case No. D2014-1172, L’Oréal SA v. Yoyo.email, Giovanni Laporta, WIPO Case No. D2016-1721, Lancôme Parfums Beauté et compagnie and L’Oréal v. Din Mont and Yunleng Mercyk, WIPO Case No. D2021-1636, L’Oréal v. Privacy Service Provided by Withheld for Privacy ehf / KHALID Ajan).

Secondly, the composition of the domain name <cerave.pk>, which entirely reproduces Complainant’s trademark CERAVE, which is a highly distinctive mark, confirms that the Respondent was aware of Complainant and its trademark and its official domain name <cerave.com>. It clearly demonstrates that Respondent registered the disputed domain name based on the attractiveness of the Complainant’s trademark to divert internet traffic to its fake website. Prior panels have held that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (WIPO Case No. D2013-0091, LEGO Juris A/S v. store24hour; WIPO Case No. D2008-0226, Lancôme Parfums et Beauté & Cie, L’Oréal v. 10

Selling; WIPO Case No. D2006-0464, Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam). Given the reputation of the CERAVE trademark, registration in bad faith can be inferred.

Thirdly, Complainant's CERAVE trademark registrations significantly predate the registration date of the disputed domain name (Annexes 1 and 4). In this regard, previous Panels have established that knowledge of Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name proves bad faith registration (WIPO Case No. D2008-0287, Alstom v. Domain Investments LLC, WIPO Case No. D2007-0077, NBC Universal Inc. v. Szk.com).

Under Section 2 of the ICANN Policy, it is established that when someone registers a domain name, he represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. It means that it was Registrant's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering said domain name (WIPO Case No. D2009-0901, Compagnie Gervais Danone contre Gueorgui Dimitrov / NETART; WIPO Case No. D2002 0806, Carolina Herrera, Ltd. v. Alberto Rincon Garcia; WIPO Case No. D2000 1397, Nike, Inc. v. B.B. de Boer).

A quick "CERAVE" trademark search would have revealed to Respondent the existence of Complainant and its trademark. Respondent's failure to do so is a contributory factor to its bad faith (WIPO Case No. D2008-0226, Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling).

Even supposing that Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "CERAVE" demonstrates that all first results relate to Complainant's products or news (Annex 7).

In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of Complainant and its trademark, as well as the high level of notoriety of Complainant, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademark at the time of registration of the disputed domain name. It is most likely to be believed that Respondent registered the domain name <cerave.pk> based on the notoriety and attractiveness of the Complainant's trademark to divert internet traffic to its fraudulent website.

Furthermore, Respondent registered domain name hiding their identity and contact details, thus, preventing Complainant from contacting them. Prior panels confirmed that a deliberate concealment of identity and contact information may in itself indicate registration in bad faith (WIPO Case No. D2012-0729, Schering Corporation v. Name Redacted and WIPO Case No. D2001-0725, TTT Moneycorp Limited. v. Diverse Communications).

Finally, Complainant submits that given Complainant's goodwill and renown, and the nature of the disputed domain name, Respondent could simply not have chosen the domain name <cerave.pk> for any reason other than to deliberately cause confusion amongst Internet users as to its source in order to take unfair advantage of Complainant's goodwill and reputation, which clearly constitutes bad faith.

Hence, in view of the above-mentioned circumstances, it is inconceivable that Respondent did not have Complainant's trademark in mind at the time of registration of the disputed domain name.

Consequently, it is established that Respondent registered the disputed domain name in bad faith.

2) Use in bad faith

Some elements may be put forward to support the finding that Respondent also uses the domain name in bad faith.

Previous Panels have considered that in the absence of any license or permission from Complainant to use such widely known trademark, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No. D2000-0055, Guerlain S.A. v. Peikang, WIPO Case N° D2008-0281, Alstom, Bouygues v. Webmaster).

It is submitted that Respondent is using the disputed domain name to intentionally attract Internet users to their website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of the services offered on the Respondent's website, in accordance with paragraph 4(b)(iv) of the Policy.

The disputed domain name <cerave.pk> is virtually identical or at least confusingly similar to Complainant's trademark CERAVE, and previous Panels have ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from Complainant's site to Respondent's site" (WIPO Case No. D2012-1765,

MasterCard International Incorporated (“MasterCard”) v. Wavepass AS; WIPO Case No. D2006-1095, Edmunds.com, Inc. v. Triple E Holdings Limited).

As mentioned above, the disputed domain name resolves towards a fake website that reproduces Complainant’s trademark and its logo, as well as the overall look and structure of its official website, pretending to offer its cosmetic product for sale with a discount. This website reproduces entirely Complainant’s trademark and visuals without its authorization and creates a false impression that it is an official website or that it is endorsed by Complainant. Furthermore, the infringing website displayed a link to an Instagram account, reproducing Complainant’s visuals and logo as the account’s picture and offering Cerave products for sale by providing a WhatsApp number for placing the order and implying they are imported from UK (Annex 1). There is no doubt in this case that, at all times, Respondent was aware that Complainant and its trademark CERAVE enjoyed a substantial reputation worldwide.

In light of this knowledge, Respondent used the disputed domain name <cerave.pk> in order to direct Internet users and generate more traffic to its fraudulent website that imitates the official Complainant’s website by reproducing its visuals, logo and content. Respondent is thus intentionally attempted to attract Internet users to its website for commercial gain by creating likelihood of confusion with the Complainant’s mark as to the affiliation or endorsement of either the Respondent or its website in accordance with Paragraph 4(b)(iv) of the Policy.

Similarly, reproducing famous trademarks in a domain name which resolves to a fraudulent website offering cosmetic products for sale under the name of Complainant, which have not been provided by Complainant nor by any official provider of official CERAVE products, and are most likely to be counterfeit goods cannot be regarded as fair use or use in good faith. The following is stated on the fraudulent website: “This website contains 100% original Skincare Products in Pakistan.” However, it should emphasize that Complainant’s Cerave cosmetics products are currently not sold in Pakistan. So, the disputed domain name not only is not used in any type of legitimate business or services since the Respondent is not Complainant’s affiliate, but it is generating a health risk to Complainants consumers by selling fake cosmetic products.

Moreover, email servers have been configured on the disputed domain name and thus, there might be a risk that Respondent is engaged in a phishing scheme (Annex 1). Therefore, the use of an email address with the disputed domain name presents a significant risk where Respondent could aim at stealing valuable information such as credit cards from Complainant’s clients or employees. Such risk has been recognized by prior Panel (WIPO

Case No. D2017-1225, Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj).

Here, it should be noted that:

- Complainant and its trademark CERA VE have a strong reputation and are widely known throughout the world (Annexes 3 and 4);*
- In view of the notoriety of Complainant, no possible use in good faith is conceivable;*
- Respondent has not provided any evidence of actual or contemplated use in good faith of the disputed domain name.*
- Respondent is also displaying the same products that can be found on cerave.com which makes the users believe that cerave.pk is the .pk equivalent of cerave.com*

Finally, given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.

All aforementioned circumstances confirm that the disputed domain name is used in bad faith.

Consequently, it is established that the Respondent both registered and used the disputed domain name in bad faith in accordance with Paragraph 4(a)(iii) of the Policy.

The Complainant confirmed that the Trade Marks Registry had issued certificates of registration for the trademark "Cerave" to the Complainant and provided copies of the same.

The Respondent has failed to submit any substantial evidence to prove their right in the DDN nor any evidence to demonstrate lack of bad faith with respect to registration, particularly in the absence of the Respondent's actual use of the DDN. In the absence of the required evidence, the Panel, therefore, in the light of documents submitted by the Complainant, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the Cerave mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has

worked hard at building and maintaining and result in confusion as to the registrant of the Disputed Domain Name.

Taking all of the case law and discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the DDN is contrary to the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDN.
3. The DDN is identical to the Complainant's trademark/names and registered domain names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <cerave.pk> to the Complainant, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will be uploaded, www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Mr. Raja Abubakar

Sole Panelist

Date: 09 September 2022