

ADMINISTRATIVE PANEL DECISION

In the matter of a domain name dispute

Between

NAOS

(Complainant)

And

RELAX BEAUTY HOUSE

(Respondent)

Case No. KLRCA/DNDR-427-2016

1. The Parties

- 1.1 The Complainant is NAOS, a company incorporated under the laws of France and having its registered address at 335 rue Pierre-Simon Laplace, Aix-en-Provence, 13290, France.
- 1.2 The Respondent, Relax Beauty House, is a business incorporated under the laws of Malaysia, with an address at 1 Lorong Kirana 1, Taman Kirana, 88200 Kota Kinabalu, Sabah.

2. The Domain Name and Registrar

The domain name in dispute is <esthederm.com.my> (“the disputed domain name”). The Registrar of the domain name is the Malaysian Network Information Centre (MYNIC).

3. Procedural History

- 3.1 The Complainant filed its Complaint with the Kuala Lumpur Regional Centre for Arbitration (“the Centre”) dated 3 November 2016 (“the Complaint”).
- 3.2 In accordance with the MYNIC Domain name Dispute Resolution Policy – the Rules (“the Rules”), paragraphs 5.2 and 5.3, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 9 November 2016 in accordance with paragraph 5.6 of the Rules and paragraph 5 of the MYNIC’s Domain name Dispute Resolution Policy (“the Supplemental Rules”). The Respondent was to file its Response by 30 November 2016.
- 3.3 There was no response filed by the Respondent.
- 3.4 In view of the Complainant having elected to have the Complaint determined by a single member panel, the Centre appointed Ms. Karen Abraham on 7 December 2016 as a panelist in the instant case (“the Panel”). The Panel has submitted a Declaration of Impartiality and Independence, as required by the Center pursuant to the Rules, paragraph 9.3.
- 3.5 Consequent upon the receipt of the Panel’s Declaration of Impartiality and Independence, the Centre transmitted to the parties a Notification of Appointment of Panellist through a Notification letter dated 7 December 2016.
- 3.6 On 29 December 2016, the Panel requested for an extension of time to forward its decision via e-mail and based on Rule 17 of the Rules, the Centre accepted and granted an extension of time until 5 January 2017.

4. The Parties’ Contentions

A. Complainant

- 4.1 The Complainant is NAOS, a company incorporated under the laws of France. The Complainant claims that based on a Declaration of regularity and conformity, the Complainant had merged on 1 April 2016 with Institut Esthederm, and as a result of the merger, Institut Esthederm was dissolved.

4.2 The Complainant has in its Complaint referred to the following trademark registrations in lodging the Complaint:

4.2.1 Trademark no. 90006988 registered on 26 October 1990 for INSTITUT ESTHEDERM (stylized) in the name of SA LABORATOIRES ESTHEDERM for “*bleaching preparations and substances for laundry use; cleaning, polishing and abrasive preparations; soaps’ cosmetics’ dentifrices; milk for cosmetic use; hair creams, body creams and creams for paling the skin; oils for washing, cleaning and cosmetic use; capillary lotions; cosmetic pencils; slimming cosmetic preparations; sun protection products, cosmetic preparations for tanning the skin; cosmetic preparations for the bath; beauty masks; products for mouth care, not for medical use, lacquers; dye and preparations for waving the hair; cosmetic products for eyelashes; depilatory products; products for removing make-up; deodorants for use in the person; disinfectant and deodorant soaps; make-up products; lipsticks; talc; all included in Class 3*” (hereinafter referred to as “the 1990 Registered Mark”); and

4.2.2 Trademark no. 2011014004 registered on 3 August 2011 for INSTITUT ESTHEDERM PARIS (stylized) in the name of Institut Esthederm for “*cosmetics and cosmetic preparations, sun-tanning cosmetic preparations, soaps, shampoos, perfumery articles, essential oils; astringents for cosmetic purposes, cosmetic preparations for the bath, make-up removing preparations, deodorant soaps, deodorants for personal use (perfumery), cleansing milk for toilet purposes, lotions for cosmetic purposes, aftershave lotions; hair lotions, shaving preparations, medicated soaps; all included in class 3*” (hereinafter referred to as “the 2011 Registered Mark”). The 2011 Registered Mark includes an express disclaimer on the words “Institut” and “Paris”.

(Both the 1990 Registered Mark and the 2011 Registered Mark are hereinafter collectively referred to as the Registered Marks)

- 4.3 The Respondent registered the disputed domain name esthederm.com.my with MYNIC Berhad on 27 October 2010 vide Registration No. D1A149547 as evidenced by Appendix B.
- 4.3.1 The disputed domain name will expire on 27 October 2017.
- 4.3.2 Copies of the printouts from the Respondent's website esthederm.com.my are adduced in Appendix L.
- 4.3.3 The Complainant has enclosed a list 2 businesses bearing the same name taken from the Companies Commission of Malaysia of, and has submitted that it was not sure which was the correct legal entity.
- 4.4 In accordance with paragraph 4.3 of the Rules, the Complainant asserts that its registered trade mark is the 2011 Registered Mark and that the disputed domain name is identical or confusingly similar to the 2011 Registered Mark, "*which is registered since 1990 in Malaysia*".
- 4.5 The Complainant contends that the Respondent will fail to prove that there is no confusion between the disputed domain name and the 2011 Registered Mark, since the 2011 Registered Mark is highly distinctive and is identical to the disputed domain name.
- 4.6 The Complainant contends that the Respondent cannot assert that the 2011 Registered Mark and the disputed domain name are different because the 2011 Registered Mark is spelled as "INSTITUT ESTHEDERM", whilst the disputed domain name is limited to ESTHEDERM.
- 4.7 The Complainant asserts that the Respondent cannot reasonably ignore that the Complainant had already filed for registration of the same domain name with a different domain name "esthederm.my", more than 2 years earlier than the disputed domain name, on 24 April 2008.
- 4.8 The Complainant further contends that the Complainant has already filed for registration of the domain name "esthederm" throughout the world with 50 records or more, including both gTLDs and ccTLDs.

- 4.9 The Complainant asserts and maintains that the fact that the Respondent only registered the name “esthederm” as a domain name, while the Complainant’s registered trade mark is “INSTITUT ESTHEDERM” does not “alter” the confusion created towards the general public for the following reasons:-
- 4.9.1 The mere adjunction of common terms is not sufficient to avoid any risk of confusion with the Registered Marks.
- 4.9.2 The word “Institut” is a common term with no expression of distinctiveness or uniqueness.
- 4.9.3 The addition of a gTLD and a ccTLD is immaterial when determining the identity or similarity between trade marks and domain names.
- 4.9.4 The Complainant further contends that the Respondent, a specialist distributor of cosmetics products in displaying the 2011 Registered Mark and presenting itself as the Complainant, as well as filing for registration of an identical domain name without authorization from the Complainant, does not leave any doubt about the Respondent’s intention to use an identical or confusingly similar trade mark and domain name belonging to the Complainant.
- 4.9.5 The Complainant further claims that the content of the webpages of the disputed domain name does not leave any doubt of the intentional confusion that the Respondent wishes to create towards the general public.
- 4.10 The Complainant states that the Respondent has no right of legitimate interests in respect of the disputed domain name, as the Respondent has never been authorized by the Complainant to register the disputed domain name, and it is not commonly known by that domain name. Further contentions of the Complainant include:-

- 4.10.1 The Respondent has registered and is using the disputed domain name in order to confuse the general public and therefore disrupt the Complainant's business.
- 4.10.2 The Respondent's conduct in presenting itself as the official website of the Complainant when this is false, and in using without authorization on most of the Respondent's webpages, the Registered Marks and in selling the same products as the Complainant's, amounts to trademark counterfeiting, and qualifies as an act of bad faith, pursuant to the MYNIC Domain name Dispute Resolution Policy ("the Policy"), paragraph 6.1(iii).
- 4.10.3 The Complainant further argues that the Respondent's intention is an attempt to attract Internet users by creating a likelihood of confusion with the Registered Marks and to gain illegal sponsorship, affiliation or endorsements.
- 4.10.4 The Complainant claims that the Respondent intended to make commercial gains, directly or indirectly, as most of its webpages are about selling the Complainant's products to consumers.
- 4.10.5 The Complainant contends that the Respondent is using on the Respondent's Facebook page, the same Chinese name as the Complainant in other countries, namely Mainland China.
- 4.11 The Complainant further contends that the Respondent lacks rights and legitimate interests in respect of the disputed domain name and relies on the following:
- 4.11.1 The Complainant and the Respondent have never been in a business relationship. In this regard, the Complainant submits that it had never authorised the Respondent to register a domain name identical or similar to the Complainant's name, Registered Marks or domain names.
- 4.11.2 The Respondent in registering the disputed domain name has de facto closed the Malaysian market to legitimate distributors whom the Complainant may deliver its products to, and

hence disrupts the Complainant's business in Malaysia. The Complainant states that these legitimate distributors will undeniably suffer from the fact that a third party is illegitimately using the company name and trade marks of their French supplier in Malaysia, hence creating conditions for unfair competition.

- 4.11.3 The Respondent is not commonly known by the disputed domain name. The Complainant refers to the webpages of the Respondent under the disputed domain name <esthederm.com.my> where the Respondent refers to itself as Esthederm, and not as Relax Beauty House.
- 4.11.4 The products sold by the Respondent are not supposed to be sold to the general public, since they are products to be sold to professional beauty centers only. Further, the Complainant states that several products are no longer available on the market for sometime, thus there is a risk that the consumers may buy expired products.
- 4.11.5 The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.
- 4.12 The Complainant alludes to the fact that the Respondent, by only selling the Complainant's products, while making representations that the Respondent is the Complainant, is not making a legitimate, non-commercial or fair use of the disputed domain name.
- 4.13 The Complainant asserts that the Respondent has breached provisions 3.3 and 3.6 of the Registration Agreement, since the Respondent has:-
- 4.13.1 Applied for a domain name infringing a registered trade mark; and
- 4.13.2 Fraudulently presented itself as the Complainant.
- 4.14 In accordance with Para 12(1)(i) of the Policy, the Complainant requests that the disputed domain name <esthederm.com.my> be transferred to the Complainant.

4.15 Finally, the Complainant states that the Respondent has “curiously” closed its website for unknown reasons, as of 28 October 2016.

B. Respondent

The Respondent has not submitted any response under Paragraph 6 of the Rules.

5. Discussions and Findings

5.1 As provided by Paragraph 17.1 of the Rules, the Panel hereby gives its decision based on the documents and evidence submitted by the Complainant, the Policy and the Rules as well as any other relevant rule and principle of law applied in Malaysia.

5.2 Paragraph 5.2 of the Policy provides that the Complainant must establish the following two elements in the Complaint:

(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights; and

(ii) The Respondent has registered and / or used the disputed domain name in bad faith.

5.3 The Panel will deal with each of the requirements of the Policy in turn.

Whether the Complainant has rights to the Registered Trade Marks

5.4 The Complainant has in its grounds only relied on Appendix G, claiming it as the “*Complainant’s registered trademark, which is registered since 1990 in Malaysia*” (2011 Registered Mark).

- 5.4.1 A perusal of the trademark registration certificate in Appendix G (the 2011 Registered Mark) however, shows that the mark referred to therein was in fact registered on 3 August 2011 for the words INSTITUT ESTHEDERM PARIS (stylized) in the name of Institut Esthederm and not in 1990 as claimed by the Complainant.
- 5.4.2 Assuming that the Complainant was referring to the 1990 Registered Mark in Appendix F which in fact was the relevant trade mark registered in 1990, this mark identifies a different proprietor, namely SA LABORATOIRES ESTHEDERM, and not the Complainant
- 5.4.3 The Complainant has not produced any documentary evidence to support the claim that it is the registered proprietor of the 2011 Registered Mark and the 1990 Registered Mark.
- 5.4.4 The Panel finds the Declaration of regularity and conformity (“Declaration”) insufficient to establish rights to the Registered Marks. The Panel is unable to find anywhere in the Declaration submitted how the rights to the Registered Marks may have devolved upon the Complainant.
- 5.4.5 The Declaration only refers to a merger between the Complainant and INSTITUT ESTHEDERM but makes no mention that the intellectual property rights held under INSTITUT ESTHEDERM are to be assigned to the Complainant. There is also no evidence that the Declaration was filed with the Trade Marks Registry to reflect the Complainant as the new owner of the 2011 Registered Mark and 1990 Registered Mark (**NIKON (MALAYSIA) SDN BHD [Complainant] And FIRST WEB ENTERPRISE [Respondent] Case Number rca/dndr/2008/14**).
- 5.4.6 The Panel refers to the decision of the **Administrative Panel in Actebis Holding GmbH v peacock.com Corporation (Case No. DBIZ2001-00005, February 14, 2002)**, which was also referred to in *NIKON (MALAYSIA) SDN BHD [Complainant] And FIRST WEB ENTERPRISE [Respondent] ibid*, which among others held:

“...An applicable dispute under Paragraph 4(a)(i) of the STOP speaks of a domain name “identical to a trademark or service mark in which the Complainant has rights”. Consequently, the onus is on the Complainant if it is not the registered holder of the mark, to provide that it has sufficient rights given to it by the holder to justify its lodging of a Complaint. Obvious examples could include licensees, assignees, mortgagees ...”
(emphasis added)

- 5.4.7 Consequently, the onus is on the Complainant if it is not the registered holder of the mark, to provide that it has sufficient rights given to it by the holder to justify its lodging of a Complaint. In the present case, all that has been alleged is that the Complainant had acquired the trademark holder, Institut Esthederm, by way of a merger.
- 5.4.8 Further, the Complainant contends that it has registered the domain name esthederm.my on 24 April 2008. However, based on the evidence adduced by the Complainant the domain name esthederm.my, is in fact in the name of IP Mirror (Malaysia) Sdn. Bhd. No documentary evidence was adduced to explain the relationship between the Complainant and IP Mirror (Malaysia) Sdn. Bhd.
- 5.4.9 Finally, the Complainant contends that the Complainant has already filed for registration of the domain name “esthederm” throughout the world with 50 records or more, including both gTLDs and ccTLDs. The Complainant has however provided copies of searches in Appendix I, which indicated that the domain name “esthederm” is still available, with regards to many gTLDs and ccTLDs (at least to a significant degree). As an example, the Panel notes that the domain names esthederm.info, esthederm.co.th, esthederm.name, esthederm.co.id, esthederm.id, esthederm.my.id, esthederm.org.uk, esthederm.co.nz, esthederm.nz, esthederm.kr.com and esthederm.at are available for registration. Further, for those “esthederm” domain names that are registered, there is no documentary evidence that these domain names with "esthederm" are registered by the Complainant.
- 5.4.10. In view of the foregoing, the Panel is not satisfied that there is enough documentary evidence to show that the Complainant has established rights to the Registered Marks that the disputed domain name is alleged to be identical or confusingly similar to.

Whether the Disputed Domain Name is Identical or Confusingly Similar to the Registered Trade Marks in Question

- 5.5 In assessing the similarity between both the Registered Marks and the Respondent's disputed domain name, it is permissible to disregard the "com.my" component of the disputed domain name, as the inclusion of gTLD and ccTLD is immaterial in determining whether the disputed domain name is identical or confusingly similar to a Complainant's trade mark (**Volkswagen Group Singapore Pte Ltd v Webmotion Design Case No.: rca/dndr/2003/01 (int)**).
- 5.6 The Panel must however determine the dominant features of the Registered Marks (**Green Hills Holding Company v. Graphic Bay Creation KLRCA-DNDR-314-2015**). Having considered the mark as a whole, visually and aurally, the Panel is of the view that the dominant feature of the Registered Marks is the word "ESTHEDERM".
- 5.7 The Registered Marks differ from the disputed domain name by the addition of a generic or descriptive term as recognized by the imposition of a disclaimer of exclusive rights over the words "Institut" and "Paris" in the 2011 Registered Mark. As such, the Panel considers that Internet users would be confused by the association between the disputed domain name and the Registered Marks. This is consistent with decisions such as **Alliance Laundry Systems LLC v. Private Registrations Aktien Gesellschaft Case No. D2012-1137**, where the Panel found that the addition of the term "systems" in the Complainant's mark does not significantly change the overall impression created by the disputed domain name.
- 5.8 Thus, the Panel finds that the addition of the term "Institut" in the Registered Marks does not affect a finding that the disputed domain name is confusingly similar to the Registered Marks, the distinctive feature of which is ESTHEDERM (**Institut Meriux v. Ho Nim, Case No. D2010-0866**). There is a strong likelihood that the disputed domain name will cause confusion as the omission of "INSTITUT" does not serve to distinguish the disputed domain name from the Registered Marks.

5.9 Consequently, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Registered Mark.

Whether the Respondent has Rights and Legitimate Interests in the Disputed Domain Name

5.10 Paragraph 7.1 of the Policy provides that the registration and/or use of the Domain Name is not in bad faith if the Respondent establishes that he has rights and legitimate interests in the Domain Name. In order to demonstrate that the Respondent does have the requisite rights or legitimate interest that would merit its entitlement to the disputed domain name, the Respondent must prove the following in accordance to Paragraph 7.2 of the Policy:

- (i) before the date of communication of the Complaint, it has used or made preparations to use the disputed domain name or a name corresponding to the disputed domain name in relation to a genuine offering of goods or services; or
- (ii) it is commonly known by the disputed domain name even though it has acquired no trade mark or service mark rights in the same; or
- (iii) it is using the disputed domain name for legitimate, non-commercial and/or fair purposes and has no intention of using the same for profits or to deceive the public.

5.11 There has been no response by the Respondent in the matter and therefore, there is no assertion or evidence adduced to demonstrate any rights and legitimate interest on the part of the Respondent. In light of the Respondent's failure to offer any explanation and justification, the Panel finds that there is no evidence on record to demonstrate that the Respondent has any rights or legitimate interests in respect of the disputed domain name estheder.com.my or that it has acquired any trade mark rights in the same.

5.12 Had the Respondent been legitimately interested in the disputed domain name, the Respondent would have at least attempted to defend its registration and/or use of the disputed domain name by filing a response to refute the Complainant's assertions and contentions. Accordingly, the Panel

takes the view that the Complainant has adduced sufficient unchallenged evidence to show that the Respondent does not have the requisite rights or legitimate interest in the disputed domain name as described in paragraph 7 of the Policy.

Whether the Respondent had Registered or Used the Disputed Domain Name in Bad Faith

5.13 Paragraph 6.1 of the Policy stipulates the evidence of bad faith registration and/or use of the domain name, which may include amongst others, the following circumstances:-

- (i) registration and/or use of the Domain Name mainly to sell, rent or transfer the domain name for profit to the Complainant, its competitor or the owner of the trade mark or service mark; or
- (ii) registration and/or use of the domain name to prevent the owner of a trade mark or service mark from using the domain name which is identical with its trade mark or service mark; or
- (iii) registration and/or use of the domain name to disrupt the business of the Complainant; or
- (iv) registration and/or use of the domain name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to:-
 - (a) the Respondent's web site;
 - (b) a web site of the Complainant's competitor; or
 - (c) any other web site and/or online location,

by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its trade mark or service mark.

- 5.14 Whilst the Panel finds the disputed domain name confusingly similar to the Registered Marks, the Panel finds the 2011 Registered Mark irrelevant for the purpose of showing bad faith on the part of the Respondent, as the registration of the disputed domain name pre-dates the 2011 Registered Mark (see **John Ode d/ba ODE and ODE Optimum Digital Enterprises v. Intership Limited [WIPO case D2001-0074]** - *"There are ample authorities supporting the view that a trademark which did not exist at the time the disputed domain name was registered cannot serve as the basis for a claim under the ICANN policy, since it is impossible for the domain name to have been registered in bad faith"*). However, the Panel finds the 1990 Registered Mark sufficient for the purposes of showing bad faith on the part of the Respondent.
- 5.15 In support of its allegation of bad faith, the Complainant has also produced the Respondent's Facebook pages including in Mainland China (Appendix K and Appendix M), and the web site of the disputed domain name in Appendix L. The documents in Appendix K and M and some of the pages in Appendix L are in Chinese and unaccompanied by translations in the official language of either Malay or English as required by Paragraph 13 of the Rules. These documents will therefore not be considered (**Alibaba Group Holding Limited v Microit Technology (M) Sdn Bhd Case No.: RCA/DNDR/2012/28**).
- 5.16 Regarding the allegation of bad faith under paragraph 6.1 of the Policy made by the Complainant that the Respondent has intentionally used a trade mark and domain name identical or confusingly similar to the Complainant by displaying the 1990 Registered Mark, and in presenting itself as the Complainant, the Panel has considered the evidence and draws the following conclusions:
- 5.16.1 This clearly illustrates that the Respondent had no bona fide intent to use the disputed domain name but in fact intended to obtain a commercial gain by riding on the reputation and goodwill of the Registered Marks to attract and/or divert customers to its website.
- 5.16.2 Further, the print out of the Respondent's website submitted by the Complainant shows that the Respondent has represented itself as "Esthederm", rather than its own name, "Relax Beauty House".

- 5.16.3 As indicated above, the Respondent did not contest any of the Complainant's assertions of facts nor its contentions. Based on the manner of the Respondent's use of the website, the Panel takes the view that the adoption of the Registered Marks by the Respondent as its domain name in relation to substantially similar services cannot be a mere coincidence and that the Respondent registered the disputed domain name in bad faith with the intention to mislead and confuse members of the public into believing that there existed an association or connection between the Respondent and the right holders when in fact, there was none. The preponderance of evidence on record establishes that the Respondent has incorporated or used the Registered Marks in the disputed domain name in a bad faith attempt to intentionally create a likelihood of confusion as to the source, sponsorship, affiliation and endorsement of its site.
- 5.16.4 It is also noted that the Respondent removed the content in the website under the disputed domain name on the same date the Complainant sent the Complaint to the Respondent by way of an email dated 28 October 2016.
- 5.17 In view of all the evidence submitted by the Complainant, the facts and circumstances, and the Respondent's failure to respond or refute the Complainant's contentions, the Panel finds that the disputed domain name has been registered and used in bad faith.

Delay by Complainant in filing this Complaint

- 5.18 Another issue which arises for consideration in this case is the long delay in the Complainant bringing these proceedings, compared to the creation date of the disputed domain name in 2010.
- 5.19 The Panel refers to the decision in **Alliance Laundry Systems LLC v. Private Registrations Aktien Gesellschaft Case No. D2012-1137**, which reads:-

“ Anticipating this issue, the Complainant notes that while laches is an equitable defense in the U.S. court system, many panels have held that laches does not properly apply in proceedings under the Policy. Drawing on panel authority, the Complainant states that the remedies available under the Policy are injunctive rather than compensatory in nature, and the

concern of the Policy is to avoid ongoing or future confusion as to the source of communications, goods, or services. In this connection, the Complainant refers to *Tom Cruise v. Network Operations Center / Alberta Hot Rods*, WIPO Case No. D2006-0560 (finding no meaningful precedent under the Policy for refusing to enforce trademark rights based on delay in bringing a complaint); *The Jennifer Lopez Foundation v. Jeremiah Tieman, Jennifer Lopez Net, Jennifer Lopez, Vaca Systems LLC*, WIPO Case No. D2009-0057; *The Hebrew University of Jerusalem v. Alberta Hot Rods*, WIPO Case No. D2002-0616; *The E.W. Scripps Company v. Sinologic Industries*, WIPO Case No. D2003-0447 (the Policy does not contemplate a defense of laches, which is inimical to the Policy's purposes).

Against this, paragraph 4.10 of the WIPO Overview 2.0 notes that "Panels have also noted that a delay in bringing a complaint under the UDRP may make it more difficult for a complainant to establish its case on the merits, particularly in relation to the second and third elements requiring the complainant to establish that the respondent lacks rights and legitimate interests and that the respondent registered and used the domain name in bad faith." There are also some relatively recent cases that "the doctrine of laches should be expressly recognized as a valid defense in any domain dispute where the facts so warrant". See *The New York Times Company v. Name Administration Inc. (BVI)*, NAF Case No. 1349045 (although in that case the then panel did not find that the circumstances supported a finding for the respondent based on laches).

Despite these more recent cases, this particular Panelist has previously accepted the consensus view of panelists on the issue of laches, set out in section 4.10 of the WIPO Overview 2.0 that "the doctrine or defence of laches as such does not generally apply under the UDRP, and that delay in bringing a complaint does not of itself prevent a complainant from filing under the UDRP, or from being able to succeed under the UDRP, where a complainant can establish a case on the merits under the requisite three elements. See *Clark Equipment Company v. AllJap Machinery Pty Ltd*, WIPO Case No. DAU2011-0042. While the delay is particularly long in this case, the Panel does not see any reason to depart from this view in the circumstances". (emphasis added)

5.20 The decision in *Alliance Laundry Systems LLC ibid* has been applied by the Panel in **TRS Quality Inc v Alpha Constant Sdn Bhd (KLRCA/DNDR/2012/30)**. In particular, the Panel considered in TRS Quality that delay should not militate against a call for relief.

5.21 Although the Complainant should have been more vigilant in monitoring any infringing activities in the marketplace involving the Registered Marks, nevertheless, the Panel finds the Respondent's non-entitlement to the disputed domain name and the conduct of its business are against the Respondent, regardless of any delay (**TRS Quality Inc v Alpha Constant Sdn Bhd (KLRCA/DNDR/2012/30)**).

6. Conclusion

6.1 Upon an evaluation and consideration of the circumstances and the evidence of the case, the Panel finds that although

6.1.1 The disputed domain name registered by the Respondent is confusingly similar to the Registered Marks;

6.1.2 The Respondent has no rights or legitimate interests in the disputed domain name; and

6.1.3 The Respondent has registered the disputed domain name in bad faith;

the Panel finds that the fact that the Complainant has failed to establish a right to a trade mark or service mark which the Complainant claims the disputed domain name www.esthederm.com.my is identical or similar to, the Complaint is denied.



Karen Abraham
Presiding / Sole Panelist
Dated: 5 January 2017