

ADMINISTRATIVE PANEL DECISION

AUSPEX Pharmaceuticals Inc. v. Privacy Protection / JH Kang Case No. DCO2022-0072

1. The Parties

1.1 The Complainant is AUSPEX Pharmaceuticals Inc., United States of America (“United States”), represented by SILKA AB, Sweden (the “Complainant”).

1.2 The Respondent is Privacy Protection, United States / JH Kang, Republic of Korea (the “Respondent”).

2. The Domain Name and Registrar

2.1 The disputed domain name <austedo.co> (the “Disputed Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 2, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on September 5, 2022.

3.2 The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2022.

3.4 The Center appointed Ike Ehiribe as the sole panelist in this matter on October 6, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

4.1 The Complainant Auspex Pharmaceuticals Inc. has its registered business address in the United States and is part of the TEVA Group, one of the world's largest generic medicine producers. The official website of the Complainant's company can be found at <austedo.com> where there is displayed information about the medicine AUSTEDO and its uses. The Austedo medicine is described as a vesicular monoamine transporter 2 inhibitor indicated for the treatment of chorea associated with Huntington's diseases and the treatment of tardive dyskinesia. The Complainant is the owner of the distinctive mark AUSTEDO and has several registrations for the word mark AUSTEDO globally, mostly under Class 5. The Complainant contends that it owns more than 35 trademark registrations globally. Some of the AUSTEDO trademarks are as follows:

- United States Registration No. 5223588, registered on June 13, 2017;
- European Union Trade Mark No. 014537187, registered on February 5, 2016; and
- Canada Registration No. 1745251, registered on August 28, 2019.

The Complainant has also used its mark in numerous domain names, such as <austedo.com>, registered on August 8, 2014.

4.2 According to the Whois information on record the Disputed Domain Name <austedo.co> was created on July 6, 2022. The Disputed Domain Name resolves to a website displaying pay-per-click ("PPC") links related to the health sector.

5. Parties' Contentions

A. Complainant

5.1 In submitting that the Disputed Domain Name is identical or confusingly similar to the Complainant's trademark, the Complainant contends it was the first to adopt the distinctive mark AUSTEDO in respect of generic medicines seven years ago and it has been used extensively globally since the Complainant applied for its first trademark before the United States Patent and Trademark Office under class 5. The Complainant contends further that the Disputed Domain Name incorporates the AUSTEDO trademark in its entirety and therefore submits that the Disputed Domain Name is a direct infringement of the Complainant's legitimate rights in the AUSTEDO trademark. In support, reliance is placed on section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and a previous UDRP decision in *AFS Wealth Management and Insurance Advisers Limited v. Gemini*, WIPO Case No. [DEU2022-0007](#). In conclusion, the Complainant asserts the addition of the country code Top-Level Domain ("ccTLD") ".co" does not differentiate the Disputed Domain Name from the Complainant's trademark following section 1.11 of the [WIPO Overview 3.0](#).

5.2 The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name considering that the Disputed Domain Name has a recent registration date of July 6, 2022, whilst the Complainant has been using the AUSTEDO trademark since 2014. Furthermore, it is submitted that the Complainant's distinctive registered trademark is not a name that one would legitimately choose as a domain name in good faith, nor is it a descriptive term serving to indicate specific characteristics of any good or services. The Complainant asserts further that the Respondent is neither a licensee or an

authorised agent of the Complainant, nor in any manner authorised to use the Complainant's distinctive trademark in any domain name. Moreover, the Complainant states that the Disputed Domain Name has been held passively and parked at a domain monetisation service displaying PPC links to the health sector, such activity it is argued does not amount to a *bona fide* offering of goods or services, or to a noncommercial and fair use of the Disputed Domain Name following *Natixisis v. Sahir Sahir*, WIPO Case No. [D2022-0098](#) and section 2.9 of the [WIPO Overview 3.0](#). In the light of the facts above the Complainant submits that the said facts establish a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that pursuant to the Policy the burden of production shifts to the Respondent to show that it does have such rights or legitimate interests following *Teva Pharmaceutical Industries Limited v. Contact Privacy Inc. Customer 1243891390/Gopal Yadav, Onlineaudiotraining*, WIPO Case No. [D2020-3192](#).

5.3 On the question of bad faith registration and use, the Complainant has listed a number of relevant factors that establish the Respondent registered the Disputed Domain Name in bad faith and engaged in bad faith use. Firstly, the Complainant submits that the registration of a domain name that is confusingly similar to another's mark, despite actual or even constructive knowledge of the trademark holder's rights constitutes bad faith registration and use pursuant to paragraph 4(a)(iii) of the Policy. The Complainant therefore asserts that it is inconceivable that the registration of the Disputed Domain Name was initiated and concluded without full knowledge of the existence of the Complainant and its well-known trademark, given that the parking page displays information about the health related products and services in a bid to exploit the trademark for commercial purposes. Secondly, the Complainant submits that the actual knowledge of a complainant's rights in a mark at the time of registration of a domain name can also be assumed based upon the fame of the asserted mark or it may be shown by use of a confusingly similar domain name in direct competition with a complainant following paragraph 3.1.4 of the [WIPO Overview 3.0](#). Thirdly, the Complainant refers to the immense popularity and goodwill enjoyed by the Complainant's trademark globally to further submit that the Respondent knowingly chose to register the Disputed Domain Name <austedo.co> to divert customers and operate with same in such a manner that could adversely affect the Complainant's goodwill and reputation. To this end, the Complainant further submits that it is inconceivable that the registration of the Disputed Domain Name was made without full knowledge of the existence of the Complainant and its well-known trademark, when a simple Google search displays results referring to the Complainant. In further support the Complainant refers to the passive parking of the Disputed Domain Name and the activated MX records pointing to amazon servers as further evidence of the Respondent's actual knowledge of the Complainant and its trademark following *LEGO Juris A/S v. nam Jong Gang*, WIPO Case No. [DCO2021-0058](#).

5.4 Fourthly, the Complainant submits that since the Disputed Domain Name resolves to a parked page with hyperlinks featuring keywords that link to advertisements for third parties offering health related services, and the Respondent generates income through "click through" revenue derived from the Disputed Domain Name, such activity is further evidence of bad faith registration and use according to the Policy. Fifthly, the Complainant refers to the possibility of Internet users coming across the Disputed Domain Name or an associated email ID ending with "[...].@austedo.co" who may assume it to be the Complainant's website/email and instantly associate the same with the Complainant as can be seen from the exhibited active MX records of the Disputed Domain Name. The Complainant asserts in this regard that the threat of using the Disputed Domain Name for sending phishing messages looms over the Complainant and as has been held by previous UDRP panels, these circumstances may be indicative of registration and use in bad faith. See previous UDRP decisions such as *Robert SA v. Marie Claude Holler*, WIPO Case No. [D2018-1878](#) and *CKM `holdings Inc. v. Grant Chonko Genesis Biosciences*, WIPO Case No. [D2022-0479](#) and paragraph 3.4 of the [WIPO Overview 3.0](#). Sixthly, the Complainant also submits that the passive holding of the Disputed Domain Name by the Respondent is further evidence of bad faith registration and use considering that all the relevant factors required to establish the doctrine of passive holding have been met here such as: the Complainant's trademark is well known; the Respondent concealed its identity and used false contact details; the Respondent has failed to provide a response or to provide evidence of actual or contemplated good-faith use; etc. See in this regard *Payoneer Inc. v. WhoisGuard, WhoisGuard Inc./John Mark, Ioan era*, WIPO Case No. [D2020-3193](#) and *AB Electronics v. Simon Gavrels*, WIPO Case

No. [D2021-3470](#).

B. Respondent

5.5 The Respondent did not reply to the Complainant's contentions. Therefore, in accordance with paragraphs 14(a) and (b) of the Rules, the Panel shall draw such inferences as it considers appropriate from the Respondent's default.

6. Discussion and Findings

6.1 Under paragraph 4(a) of the Policy to succeed in this administrative proceedings the Complainant must prove that: (i) the Disputed Domain Name is identical and or confusingly similar to the trademark or service mark of the Complainant; (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and (iii) the Disputed Domain Name has been registered and is being used in bad faith.

6.2 As expressly stated in the Policy, the Complainant must establish the existence of each of these three elements in any UDRP administrative proceeding.

A. Identical or Confusingly Similar

6.3 This Panel accepts that the Complainant, a member of the well-known TEVA group, is the registered owner of numerous trademark registrations of the distinctive AUSTEDO trademark in various jurisdictions such as the United States, European Union, and Canada.

6.4 The Panel also finds that upon visual examination, the Disputed Domain Name is identical to the Complainant's AUSTEDO trademark, in that the Disputed Domain Name wholly incorporates the Complainant's mark in its entirety. Furthermore, the Panel is satisfied that the mere addition of the ccTLD ".co" does absolutely nothing to differentiate the Disputed Domain Name from the Complainant's trademark such as to prevent a confusing similarity finding. See in this regard previous UDRP decisions in *AFS Wealth Management and Insurance Advisers Limited v. Gemini, supra*; *Teva Pharmaceutical Industries Ltd and Auspex Pharmaceuticals, Inc. v. Registration Private, Domains By Proxy, LLC / Elan Katz, Katz Ventures*, WIPO Case No. [D2021-1705](#); and section 1.11 of the [WIPO Overview 3.0](#).

6.5 The Panel therefore finds that the Complainant has established the Disputed Domain Name is identical to a trademark in which the Complainant has rights, and so has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

6.6 The Panel also finds that the Complainant is entitled to refer to the fairly recent registration date of the Disputed Domain Name on July 6, 2022 to underscore the submission that the Respondent has no rights or legitimate interests in the Disputed Domain Name within the ambit of paragraph 4(c) of the Policy considering that the Complainant has been using the AUSTEDO trademark since 2014. Leaving aside the distinctive nature of the Complainant's trademark and the observation that the AUSTEDO trademark is certainly not a name that one would choose as a domain name in good faith, the Panel is satisfied that the following factors the Complainant has referred to further support that submission. In the first instance, based on the evidence adduced, the Panel accepts the assertion that the Respondent is neither a licensee or an authorised agent of the Complainant, nor in any other manner authorised to use the Complainant's distinctive AUSTEDO trademark. Secondly, the Complainant asserts that the Disputed Domain Name has been held parked at a domain monetisation service displaying PPC links related to the health sector. Following paragraph 2.9 of the [WIPO Overview 3.0](#) and a recent UDRP decision in *Natixis v. Sahir Sahir, supra*, the Complainant submits in this regard that such use does not amount to a *bona fide* offering of goods and services or to a noncommercial and fair use of the Disputed Domain Name. Thirdly, the Complainant refers to the above-mentioned facts and asserts that the Complainant has established a *prima facie* case that the Respondent has no rights and or legitimate interests in the Disputed Domain Name, thereby shifting

the burden of establishing that those rights or interests exist, to the Respondent. See in this regard the decision in *Teva Pharmaceutical Industries Limited v. Contact Privacy Inc. Customer 1243891390/Gopal Yadav, Onlineaudiolearning, supra*. Lastly, the Respondent has not rebutted the Complainant's *prima facie* case and there is nothing in the record to suggest the Respondent would otherwise have rights or legitimate interests in the Disputed Domain Name.

6.7 The Panel accordingly finds that the Complainant has established the second element of the Policy being the requirement of a lack of rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

6.8 On the question of registration and bad faith use, the Complainant has referred to a number of factors that have enabled the Panel to hold and conclude that the Respondent deliberately registered the Disputed Domain Name in bad faith with the intention of engaging in bad faith use. In the first instance, the Complainant asserts that the Respondent must have known of the existence of the Complainant and the Complainant's prior rights in the AUSTEDO trademark before electing to create the Disputed Domain Name on July 6, 2022, considering that the Complainant has been exercising its rights over the AUSTEDO trademark since 2014. In this regard, the Complainant alludes to the fact that an ordinary Internet search would have undoubtedly alerted the Respondent to the existence of the Complainant and its well-known AUSTEDO trademark for generic medicines. Secondly, the Complainant refers to two distinct, but highly, relevant acts on the part of the Respondent that further substantiates the contention that the Respondent must have known of the existence and world-wide reputation of the Complainant and its trademark before registering the Disputed Domain Name. Specifically, the fact that the Disputed Domain Name is parked at a domain monetisation service with hyperlinks to health related advertisements for third parties through which the Respondent earns PPC revenue. In addition to the fact that the Disputed Domain Name has active MX records pointing to email servers is indicative of an intention to use the Disputed Domain Name for phishing or other fraudulent purposes through the use of email IDs ending with "[...].@austedo.co", or at the very least in a way that is likely to mislead Internet users to assume a connection with the Complainant that does not exist. See in this regard previous UDRP decisions in *TEVA Pharmaceutical Industries Limited v. Privacy service provided by Withheld for Privacy erf/Oren Harrison, Pacific States Insulation and Acoustical Contracting Inc.* WIPO Case No. [D2022-1977](#) and *LEGO Juris A/S v. nam jong Gang, supra*.

6.9 Accordingly, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location. Moreover, as earlier indicated at paragraph 5.5 above, this Panel has drawn adverse inferences from the failure of the Respondent to respond to the Complainant's submissions in these proceedings.

6.10 The Panel is therefore satisfied that the Respondent registered and uses the Disputed Domain Name in bad faith.

7. Decision

7.1 For the foregoing reasons, in accordance with paragraphs 4(1) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <austedo.co> be transferred to the Complainant.

/Ike Ehiribe/

Ike Ehiribe

Sole Panelist

Date: October 26, 2022