

ADMINISTRATIVE PANEL DECISION

Sanofi v. Super Privacy Service LTD c/o Dynadot / liuzhao kuan, ai dian hui
ke ji gong si
Case No. D2022-0925

1. The Parties

The Complainant is Sanofi, France, represented by Selarl Marchais & Associés, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America (“U.S.”) / liuzhao kuan, ai dian hui ke ji gong si, China.

2. The Domain Name and Registrar

The disputed domain name <buybestambien.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 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 March 17, 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 amendments to the Complaint on March 17, 2022 and March 23, 2022.

The Center verified that the Complaint together with the amendments 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on April 21, 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

The Complainant, Sanofi, is a French multinational pharmaceutical company headquartered in Paris, France, and is one of the world's largest multinational pharmaceutical companies by prescription sales. The Complainant engages in research and development, manufacturing and marketing of pharmaceutical products for sale, principally in the prescription market and also the development of over-the-counter medication. The Complainant developed and sells worldwide a drug with demonstrated utilities for the treatment of insomnia under the trademark, AMBIEN. The Complainant has offices worldwide in more than 100 countries employing more than 100,000 people.

The Complainant owns the following registered trademarks for AMBIEN around the world, including but not limited to:

- French Trademark No. 93456039, registered on February 19, 1993;
- European Union Trade Mark No. 003991999, registered on November 28, 2005;
- International Registration No. 605762, registered on August 10, 1993; and
- U.S. Registration No. 1808770, registered on December 7, 1993.

The Complainant also owns the domain names <ambien.com>, <ambien.net>, and <ambien.org> which were registered on April 12, 2000, and <ambien.info> which was registered on August 24, 2001.

The disputed domain name, <buybestambien.com>, was registered on February 22, 2022, and resolved to a website displaying pornographic content.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered AMBIEN mark as the disputed domain name comprises the AMBIEN mark in its entirety with the addition of the generic words "buy" and "best" and the generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or made serious preparation for that purpose, and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith as it contains pornographic content.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name contains the Complainant's AMBIEN mark in its entirety.

It is also well-established that the addition of a term would not prevent a finding of confusing similarity between a disputed domain name and a complainant's mark. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; *Wal-Mart Stores, Inc. v. Kuchora, Kal*, WIPO Case No. [D2006-0033](#); and *Hoffmann-La Roche Inc. v. Andrew Miller*, WIPO Case No. [D2008-1345](#).) Here, the addition of the words "buy" and "best" to the AMBIEN mark does not avoid a finding of confusing similarity.

Further, it is well established that the addition of a gTLD ".com", as a standard registration requirement, is typically disregarded under the first element confusing similarity test. (See [WIPO Overview 3.0](#), section 1.11.1.)

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations long before the date that the disputed domain name was registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name that would be sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence showing that the disputed domain name resolved to a website containing pornographic content. It is well-established that the use of a domain name that corresponds to another's mark, for posting of pornographic content and/or related services, may constitute evidence of bad faith registration and use of a domain name (see *Coral Trademarks, Ltd. v. Eastern Net, Inc.*, WIPO Case No. [D2000-1295](#) ("The posting of pornographic contents on a web site under a domain name that corresponds to a third party's mark is a bad faith use of a domain name"); *America Online, Inc. v. Viper*, WIPO Case No. [D2000-1198](#) ("The use of AOL as part of a domain name offering pornographic products and services certainly 'tarnishes' Complainant's existing marks, which is also evidence of bad faith"); *Valor Econômico S.A. v. Daniel Allende*, WIPO Case No. [D2001-0523](#) ("Complainant has proved that Respondent linked the <valoreconomico.net> web page to adult content or pornographic sites. This is a typical bad faith use of the domain name."); *ABB Asea Brown Boveri Ltd. v. Quicknet*, WIPO Case No. [D2003-0215](#) ("The use of ABB as part of a domain name offering pornographic material certainly tarnishes the Complainant's existing marks, which is also evidence of bad faith."); *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#) ("Preliminary, it is commonly understood, under WIPO case law, that whatever the motivation of Respondent, the diversion of the domain names to a pornographic site is itself certainly consistent with the finding that the Domain Name was registered and is being used in bad faith.") Similarly, the Panel finds that the use of the disputed domain name in the present case constitutes evidence of bad faith registration and use of the disputed domain name.

Further, the registration of the disputed domain name is confusingly similar to the Complainant's AMBIEN mark which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Previous UDRP panels ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the UDRP. Further, the Complainant submitted evidence that AMBIEN is a coined term with no meaning and therefore distinctive in nature. Given the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant at the time of registering the disputed domain name and specifically targeted the Complainant and its goodwill.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

Accordingly, given the particular circumstances of this case and the distinctive nature of the trademark, based on the balance and the evidence presented to the Panel, including the registration of the disputed domain name long after the registration of the Complainant's trademark, the confusing similarity between the disputed domain name and the Complainant's trademark, the Respondent's use of the disputed domain name, and the failure of the Respondent to submit a response, and the fact that there is no plausible good faith use the Respondent can put the disputed domain name to, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <buybestambien.com> be cancelled.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: May 3, 2022