

ADMINISTRATIVE PANEL DECISION

Sanofi v. vijit singh, online store
Case No. D2023-3743

1. The Parties

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

The Respondent is vijit singh, online store, India.

2. The Domain Name and Registrar

The disputed domain name <ambienmeds.com> (the “Domain Name”) is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2023. On September 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (DOMAIN ADMIN, DOMAIN PRIVACY SERVICE FBO REGISTRANT) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 2023, 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 12, 2023.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 6, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on October 17, 2023. 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 following facts are undisputed.

The Complainant is a French multinational pharmaceutical company with its headquarters in Paris, France. As such, the Complainant engages in research and development, manufacturing and marketing of pharmaceutical products. The Complainant is one of the largest multinational pharmaceutical companies in the world for prescription sales with net sales of EUR 37.7 billion in 2021.

The Complainant developed and sells throughout the world a pharmaceutical product for the treatment of insomnia under the trademark AMBIEN.

The Complainant is the owner of several trademark registrations, including but not limited to, the French trademark registration AMBIEN (word mark) with registration no. 93456039 and with registration date of February 19, 1993, for goods in class 5, and the International trademark registration AMBIEN (word mark) with registration no. 605762 and with registration date of August 10, 1993, for goods in class 5, designating, *inter alia*, Germany, China, and the Russian Federation (the “AMBIEN Trademark”).

The Domain Name was registered on September 6, 2023. The Domain Name resolves to a website which purports to sell pharmaceutical products that are typically prescription only, including opioids.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that the Domain Name is confusingly similar to the AMBIEN Trademark in which the Complainant has rights. More specifically, the Domain Name comprises of the AMBIEN Trademark in its entirety. The Respondent merely added the term “meds”. The term “meds” is an abbreviation of the term “medicines”, which refers to the Complainant’s business activities.

The Respondent has no prior rights or legitimate interests in the Domain Name, whereas the Respondent is not commonly known by the Domain Name and its name has no resemblance with the AMBIEN Trademark. Moreover, the Complainant has not licensed or otherwise permitted the Respondent to use its AMBIEN Trademark or to register domain names incorporating the AMBIEN Trademark. In addition to this, the Respondent is making neither a *bona fide* offering of goods or services, nor a legitimate, noncommercial fair use of the Domain Name. To the contrary, the Domain Name refers to an online platform on which consumers can purchase presumably counterfeit medications at a discounted price.

The Domain Name was registered and was being used in bad faith. The Respondent has registered the Domain Name with prior knowledge of the AMBIEN Trademark and the Complainant’s activities. Moreover, the Domain Name has been registered with the sole intention to attract, for commercial gain, Internet users to the Domain Name by creating a likelihood of confusion with the AMBIEN Trademark as to the source, sponsorship, affiliation, or endorsement of the Domain Name by the Complainant. This follows evidently from the famous and distinctive nature of the AMBIEN Trademark as well as the leading position of the Complainant within the pharmaceutical industry. In addition to this, the Respondent is using the Domain

Name to effectively disrupt the Complainant's business by offering for sale presumably counterfeit products and/or competing products.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "meds", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

- The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name, even if the Respondent has acquired no trademark or service mark rights. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

- The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- The record contains no other factors demonstrating rights or legitimate interests of the Respondent.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further adding to the above, the Panel finds that the Respondent is not making use of the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods and services.

To the contrary, the Respondent uses the website to offer products for sale that clearly relate to the products for which the AMBIEN Trademark is registered and being used for. By doing so, the Respondent is using the Domain Name in order to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Trademark and/or the Complainant as to the source, sponsorship, affiliation, or endorsement of the website.

Moreover, the Respondent offers pharmaceutical products for sale online. Certainly lacking a Response, on a balance of probabilities it must be held that these pharmaceuticals are counterfeit and/or are being sold illegally.

Hence, the Panel finds that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes. As such, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel considers that the record of this case reflect that:

- The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, 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 of a product or service on the Respondent's website. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4

In the present case, the Panel notes that the Domain Name comprises of the Trademark in its entirety including the term "meds", which refers to the Complainant's activities. Moreover, the website to which the Domain Name resolves offers products that clearly relate to the products that are being offered by the Complainant under the Trademark. In light of the aforementioned, the Panel finds that the Respondent must have been aware of the existence of the Complainant's activities and rights at the time that the Respondent registered the Domain Name.

As such, the Respondent has registered and is using the Domain Names to intentionally attract Internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the website.

Certainly lacking a Response, the Panel finds that there is no other plausible explanation than that the Respondent was aware of the existence of the Complainant's rights and activities at the time the Respondent registered the Domain Name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain name constitutes bad faith under the Policy.

The Panel also considers the fact that the Respondent offers presumably counterfeit medications at a discounted price. In accordance with section 2.13.2 of the [WIPO Overview 3.0](#), the circumstance that pharmaceutical products are offered disproportionately below market value *prima facie* suggest that they are not genuine. This argument is further strengthened by the fact that the Respondent has also improperly masked its identity. Moreover, the Respondent chose not to file a Response in order to rebut the claims from the Complainant.

Furthermore, the Panel takes into consideration that the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#), this also supports a finding of registration and use in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitute bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Domain Name, <ambienmeds.com> be cancelled.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: October 31, 2023