

ADMINISTRATIVE PANEL DECISION

Laboratoire HRA Pharma SAS v. Compaid Pty Ltd
Case No. DAU2023-0027

1. The Parties

The Complainant is Laboratoire HRA Pharma SAS, France, internally represented.

The Respondent is Compaid Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <compeed.com.au> is registered with Domain Directors Pty Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2023, Domain Directors Pty Ltd. transmitted by email to the Center its verification response disclosing additional registrant and contact information for the disputed domain name. The Center sent an email communication to the Complainant on June 8, 2023 providing the additional registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 8, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 12, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2023.

The Center appointed John Swinson as the sole panelist in this matter on July 28, 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 Complainant is a French company and is part of the Perrigo group of companies.

The Complainant owns Australian Trade Mark Registration No. 479626 for COMPEED that was filed on January 14, 1988 and entered on the register on August 21, 1989. The Complainant also owns other Australian trade mark registrations for COMPEED.

The Complainant's COMPEED products were launched in 1986. They are gel plasters used for blister care, and for corn, callus and bunion care and cold sore care. These products are available in Australia and are marketed by the Complainant (or a related company of the Complainant) at websites located at <compeed.au> and <compeed.com>.

Until March 30, 2023, the disputed domain name was owned by Johnson & Johnson, the previous owner of the COMPEED brand. Johnson & Johnson sold the brand to the Complainant. Until March 30, 2023, the website at the disputed domain name advertised the Complainant's products and according to the Complainant was an "official COMPEED website". On March 30, 2023, the registration of the disputed domain name lapsed. The Respondent registered the disputed domain name on May 1, 2023, which is the day that it "dropped".

The Respondent is an Australian corporation, based in Sydney. The Respondent did not file a response, so little information is known about the Respondent.

The website located at <compaid.com.au> is titled "Compaid Pty Ltd" and states: "We are an Australian owned consultancy firm, providing comprehensive technology consultancy and services to the consumer at home and all small to medium sized businesses. We are based in Sydney and we service all metropolitan areas in Sydney." This website has coding errors and displays error messages. According to Whois records, the <compaid.com.au> domain name is owned by another Australian company. According to ASIC records, this company was deregistered in 2014.

At one time, the website at the disputed domain name resolved to a website with information about businesses in New Hampshire, United States of America. The heading of this website was "Find local services IN NEW HAMPSHIRE". This website does not mention COMPEED, and has terms of use that refer to a Singapore company.

The Respondent is using the same website design for other websites, which shows ads for local services in Germany on an Austrian domain name, with ads for local services in Oklahoma.

When the Panel visited the website at the disputed domain name, a CloudFlare page was displayed that was titled "Sorry, you have been blocked" and included the text: "This website is using a security service to protect itself from online attacks. The action you just performed triggered the security solution. There are several actions that could trigger this block including submitting a certain word or phrase, a SQL command or malformed data."

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 disputed domain name.

Notably, the Complainant contends that the Respondent does not appear to be a legitimate company and behind the Respondent is a Singapore company who is engaged in a pattern of registering domain names and using them for parking pages.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
- (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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns registered trademarks for COMPEED as discussed in section 4 above.

Typically and as is appropriate in this case, it is permissible to disregard respectively the country-code Top Level Domain, ".com.au", as a functional component of the domain name system.

Accordingly, the disputed domain name is identical to the Complainant's COMPEED trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to the respondent of the subject matter of the dispute, the respondent's *bona fide* use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or

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

(iii) the respondent is 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and the burden of production will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). Based on the materials provided in the Complaint, the Complainant has met this *onus* and has established a *prima facie* case against the Respondent.

There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name. The disputed domain name does not correspond with the Respondent's corporate name.

The Respondent is using the disputed domain name for a website for advertisements for local services in New Hampshire, without any reference to COMPEED.

Moreover, as discussed below, it appears that the Respondent is being used, potentially unknowingly, by a third party as a front for the registration of the disputed domain name.

The Complainant succeeds on the second element of the Policy.

C. Registered or Subsequently Used in Bad Faith

Unlike the Uniform Domain Name Dispute Resolution Policy (the UDRP), the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The disputed domain name is identical to the Complainant's unique and well-known trade mark. The Complainant provided evidence of the reputation of its COMPEED trade mark. The disputed domain name was previously used for a website that advertised the Complainant's COMPEED products. The Respondent acquired the disputed domain name after it expired and as soon as it became available. These facts suggest that the Respondent was aware, or should have been aware, of the Complainant and its COMPEED trade mark. See *Smartmark Pty Ltd v. Dash Corp Pty Ltd, Robert Kaay, Registry Australia Pty Ltd*, WIPO Case No. [DAU2019-0031](#); *Discovery Holiday Parks Pty Ltd. v. B2B Network Pty Ltd*, WIPO Case No. [DAU2021-0027](#). It is also likely that the Respondent registered the disputed domain name solely because of the traffic generated by Internet users looking for the Complainant's products and website.

The Complainant also provided evidence that the named Respondent may not be the "true respondent", and that a third party may have registered the disputed domain name using the name and Australian Business Number of the Respondent as a ruse or a front. The Panel cannot reach a definite conclusion on this issue. However, it is curious that there is an incomplete website that displays the name of the Respondent at <compaid.com.au> -- which is a domain name not associated with the Respondent but that is registered in the name of a deregistered company. This strongly suggests that the true Respondent is trying to hide its identity when engaging in its bad faith conduct. Compare *Marcia Pilkington for the trustee for Marcia's Sushi Express Discretionary Trust No 2 v. Name Redacted*, WIPO Case No. [DAU2023-0023](#).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy.

7. Decision

For all 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 <compeed.com.au> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: August 10, 2023