

## **ADMINISTRATIVE PANEL DECISION**

Vetoquinol SA v. Super Privacy Service LTD c/o Dynadot / Hank Cohn,  
IT Manager  
Case No. D2022-0134

### **1. The Parties**

The Complainant is Vetoquinol SA, France, represented by Novagraaf France, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America (“United States”) / Hank Cohn, IT Manager, Macao, China.

### **2. The Domain Name and Registrar**

The disputed domain name <felpreva.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 January 14, 2022. On January 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 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 January 19, 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 January 21, 2022.

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 January 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2022. The Response was filed with the Center on February 14, 2022.

The Center appointed John Swinson as the sole panelist in this matter on February 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 is a French business that operates internationally in the field of animal health. The Complainant's business consists of the innovation, development, production and marketing of veterinary medicines and non-medicinal products for farm and companion animals.

The Complainant owns registered trademarks for FELPREVA. These include, for example, German trademark No. 302020101848 filed on February 10, 2020, and Australian trademark Registration No. 2080556 (IR Number 1524632) with a convention priority date of February 10, 2020.

The FELPREVA product is a spot-on parasiticide for cats that was launched in late 2020.

The disputed domain name was registered on February 13, 2020.

The Respondent is an individual from Macao, China.

The disputed domain name does not resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

In summary, the Complainant made the following submissions:

The Complainant owns several registered trademarks for FELPREVA, the first of which was filed on February 10, 2020.

The FELPREVA trademark applications were filed by Bayer Animal Health GmbH ("Bayer"), and were assigned to the Complainant on December 16, 2020 as part of a business acquisition. Part of this business acquisition was announced on February 12, 2020 (regarding "Drontal and Profender Within the European Economic Area and the United Kingdom").

The disputed domain name is identical to the Complainant's FELPREVA trademark.

The Complainant has never licensed nor otherwise permitted the Respondent to use its FELPREVA trademark or to apply for any domain name incorporating this term in its entirety. There is no relationship between the Complainant and the Respondent.

Considering that the term "felpreva" has no significance, is very distinctive and that the Respondent does not own any prior rights to FELPREVA, the registration of the disputed domain name just one day after the public communication of the transfer of certain trademarks to the Complainant, suggests that the Respondent had the intention to speculate on the rights transferred to the Complainant.

The disputed domain name has not been used in the two-year period since registration. This proves that the Respondent has no intention of using the disputed domain name. Passive holding of a domain name can be evidence of bad faith use.

Negotiations with the Respondent were attempted anonymously but had no chance of success given the prohibitive amount proposed by the Respondent.

## **B. Respondent**

In summary, the Respondent made the following submissions:

The disputed domain name has not been activated and used since registration. It is very common for registered domain names not to be activated.

The disputed domain name was registered before the registration of Bayer's trademark. A pending trademark application is different from an approved trademark, and the trademark itself does not have the exclusive right to use the registered trademark at the date of filing of the application. Bayer's earliest trademark registration date is March 20, 2020 in Germany.

Common law rights logically cannot precede a trademark's use in commerce.

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a 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 and is being used in bad faith.

The onus of proving these elements is on the Complainant even though the Respondent failed to submit a Response.

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 it deems applicable.

### **A. Identical or Confusingly Similar**

The first element of the Policy requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As stated above in section 4, the Complainant owns the registered trademarks for FELPREVA. The disputed domain name includes the Complainant's FELPREVA trademark in its entirety and no other terms.

The Panel concludes that the disputed domain name is identical to the Complainant's trademark.

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

### **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 can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] 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 [disputed] 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.

UDRP 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 sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case.

None of the circumstances listed in paragraph 4(c) apply in the present circumstances.

The Complainant alleges that the Complainant has never licensed nor otherwise permitted the Respondent to use its FELPREVA trademark or to apply for any domain name incorporating this term in its entirety. The Complainant also alleges that there is no relationship between the Complainant and the Respondent.

There is no evidence that the Respondent is commonly known by the disputed domain name.

There is no evidence of use, *bona fide* or otherwise, of the disputed domain name.

The Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent does not explain the reason why he claims to have rights or legitimate interests in the disputed domain name. From the Response, it seems the Respondent claims its rights or legitimate interests are connected to the fact that at the time of the registration of the disputed domain name the Complainant's trademark was not registered yet. That argument will be addressed under the third element, and in any case does not support rights or legitimate interests of the Respondent. The Respondent provided no reason as to why he registered the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

### C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

The Respondent registered the disputed domain name three days after the Complainant's predecessor-in-title filed its trademark application for FELPREVA. Moreover, the disputed domain name was registered one day after it was publicly announced that the Respondent was buying Bayer's animal health business.

FELPREVA is a made-up term, with no meaning in English.

The Respondent gave no reason as to why he selected FELPREVA as a domain name. The Respondent did not say that he was unaware of the FELPREVA trademark application when he registered the disputed domain name. It appears to be more than a coincidence that the Respondent registered the disputed domain name three days after the FELPREVA trademark application was filed. The Panel finds that it is probable that the Respondent knew of the trademark application for FELPREVA when he registered the disputed domain name, and that he registered it due to its identity with the trademark application for FELPREVA.

The Respondent argues that his conduct was not in bad faith because (a) the FELPREVA trademark was a pending application, not a registered trademark, when the Respondent registered the disputed domain name, and (b) at this time, the Complainant had no common law trademark rights in FELPREVA.

Although (a) and (b) are correct statements, it is incorrect to conclude that there was no bad faith as a result. The Respondent did not provide any explanation on how he arrived at precisely the same term (which is a made-up term) as the Complainant's predecessor-in-title, some days after the filing of the trademark application (and just on the same day of the publication of the trademark application).<sup>1</sup> Noting FELPREVA is a made-up term, the Panel finds more likely than not that, the Respondent would have registered the disputed domain name due to the significance that it would have for the holder of the FELPREVA trademark. The Panel finds that the circumstances of this case lead to a conclusion that the Respondent's intent in registering the disputed domain name was probably to unfairly capitalize on the nascent trademark rights in FELPREVA. Such registration of a disputed domain name for this purpose constitutes registration in bad faith under the Policy. The fact that the Complainant was not the holder of the FELPREVA trademark at the time of the registration of the disputed domain name does not change the Panel's conclusion. In addition, the FELPREVA trademark was registered in several countries, with a priority or effective date that was prior to registration of the disputed domain name.

In *Sanofi v. Domain is for Sale at www.dan.com* --- c/o Dynadot / Domain Administrator, *Domain is for Sale at www.dan.com*, WIPO Case No. [D2021-2542](#), the disputed domain name was registered four days after the complainant filed its registered trademark. In deciding for the Complainant, the Panelist stated:

"The Panel finds remarkable that the disputed domain name is identical to the Complainant's trademark and the word 'eltulvy' seems to be a coined term with no particular meaning in any language.

It is further remarkable that the Respondent has not offered any explanation of any rights or legitimate interests in this term or in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith."

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<sup>1</sup> The Panel has visited the website of the German Patent and Trademark Office as part of the general powers of the Panel under the Rules, and have seen that, through the "Monitoring" tool, trademark applications are published online three days after the filing of the application. The fact that the trademark applications are published in such a manner, along with the identity between the disputed domain name and FELPREVA (a made-up term), affirm the Panel's consideration that the date of the registration of the disputed domain name is more than a coincidence, and points towards the Respondent registering the disputed domain name due to such application.

It is not a bar to finding of bad faith that the Respondent has not used the disputed domain name. See, for example, *Les Parfumeries Fragonard v. Jean-Claude Maitre*, WIPO Case No. [D2020-0709](#) and the cases cited in that case. The same considerations apply in the present case.

The Panel finds that the Respondent has both registered and used the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

## **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 <felpreva.com> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: March 7, 2022