

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. Domain Protection Services, Inc. / Alex Izvorski,
Fountain Bioscience
Case No. D2022-0223

1. The Parties

The Complainant is Laboratoires Thea, France, represented by AARPI Scan Avocats, France.

The Respondent is Domain Protection Services, Inc., United States of America (“United States”) / Alex Izvorski, Fountain Bioscience, United States.

2. The Domain Names and Registrar

The disputed domain names <thealz.co> and <thealz.com> are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2022. On January 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 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 amended Complaint on January 31, 2022.

The Center verified that the Complaint together with the amended 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 February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2022.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on March 11, 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 pharmaceutical company, based in France, specialized in the research, development, and commercialization of eye-care products.

The Complainant offers preventive and curative products in the areas of diagnosis, surgery, and therapeutics, amongst which a product for the treatment of dry eye syndrome sold the trademark THEALoz.

The Complainant is the owner of the following trademark registrations for THEALoz:

- European Union trademark registration no. 006501191, registered on December 23, 2008, in class 5;
- International trademark registration no. 1105860, registered on December 22, 2011, in class 5.

The Complainant has also registered the domain names <thealoz.com> and <thealoz.org> in 2011 and 2017.

The disputed domain names <thealz.com> and <thealz.co> were both registered on June 16, 2018. At the time of filing of the Complaint, the disputed domain names redirected users to a parking page with links directly related to the Complainant's field of activity.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain names <thealz.com> and <thealz.co> are confusingly similar to its THEALoz registered trademark as they identically reproduce its trademark with the mere deletion of the middle letter "O", the generic Top-Level Domain ".COM" and country code Top-Level Domain ".CO" being disregarded due to their purely technical function.

The Complainant further contends that the Respondent is not an authorized distributor of the Complainant, and that the Complainant has not authorized the Respondent to include its mark in the disputed domain names. Nor has the Complainant any knowledge that the Respondent is commonly known by the disputed domain names.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain names in bad faith. According to the Complainant, the Respondent was aware of the existence of the Complainant and of its trademark when it registered the disputed domain names, and the Respondent registered the disputed domain names for commercial gain, for the purpose of selling, renting, or otherwise transferring the domain names registration to the Complainant or to a competitor. Moreover, the disputed domain names were used to redirect internet users to a parking page with links directly related to the Complainant's activity, which, according to the Complainant, amounts to use in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the word mark THEALoz.

Ownership of a trademark registration is generally sufficient evidence that a Complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1.

The disputed domain names <thealz.com> and <thealz.co> incorporate almost entirely the Complainant's THEALoz mark, with the mere deletion of the letter "o".

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see section 1.9 of the [WIPO Overview 3.0](#)).

The Panel considers that the deletion of the sixth letter "o" of the Complainant's trademark is a typical case of a deliberate misspelling of a mark (so-called "typosquatting") (see for instance *FERRING BV v. Contact Privacy Inc. Customer 1244666913/Nicole Smith*, WIPO Case No. [D2020-0156](#), concerning the domain name <ferring.com>). The deletion of the letter "o" does not change the overall impression produced by the disputed domain names and does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark.

The disputed domain names also include the country code Top-Level Domain ("ccTLD") ".co" and the generic Top-Level Domain ("gTLD") ".com". In determining whether a domain name is identical or confusingly similar to a complainant's mark, UDRP panels have typically disregarded the generic Top-Level Domain ("gTLD") or the ccTLD (see section 1.11 of the [WIPO Overview 3.0](#)).

The Complainant has thus satisfied the condition set forth in paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has failed to file a response.

Based on the information submitted by the Complainant, the Respondent is not an authorized distributor of the Complainant, nor has the Complainant granted to the Respondent an authorization to use the disputed domain names. Moreover, there is no indication that the disputed domain names correspond to the Respondent's name or that the Respondent has been commonly known, as an individual, business or otherwise, by the disputed domain names.

No evidence has been presented that the Respondent was using or was making demonstrable preparations to use the disputed domain names in connection with any type of *bona fide* offering of goods or services. Instead, the Respondent used the disputed domain names in connection with a website containing pay-per-click links to third-party websites. This type of use does not constitute *bona fide* offering of goods and services.

The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b). The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Panel finds that the Respondent's silence corroborates the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

Accordingly, the Panel rules that the Respondent has no rights or legitimate interests in the disputed domain names, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The disputed domain names were registered many years after the Complainant first registered and used its THEALoz trademark. Given the presence, on the parking page connected to the disputed domain names, of several references to the Complainant's trademark THEALoz, the Panel considers that the Respondent could not ignore the existence of the Complainant and of its trademark at the time of the registration of the disputed domain names. As a consequence, the Panel finds it unlikely that the disputed domain names were chosen independently without reference to the Complainant's trademark.

Furthermore, the Respondent has used the disputed domain names in connection with a website featuring sponsored links. This shows, in the Panel's opinion, an intention on the part of the Respondent to exploit and profit from the Complainant's trademark, by attempting to generate financial gains by means of "click through" revenues. Such conduct constitutes bad faith registration and use of the disputed domain names within the meaning of paragraph 4(b)(iv) of the Policy (see *F. Hoffmann-La Roche AG v. James Lee*, WIPO Case No. [D2009-1199](#); *Scania CV AB v. Michael Monrief*, WIPO Case No. [D2009-1149](#); *Aspen Holdings Inc. v. Rick Natsch, Potrero Media Corporation*, WIPO Case No. [D2009-0776](#); and *AllianceBernstein LP v. Texas International Property Associates*, WIPO Case No. [D2008-1230](#)). The Respondent's intent to profit from the confusion is further evident given the typosquatting nature of the disputed domain name, showing an intent by the Respondent in the mere construction of the disputed domain name to confuse and misdirect Internet users unaware of the omitted "o".

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain names in bad faith, and that the Complainant has satisfied the condition set forth in 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 names, <thealz.co> and <thealz.com>, be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: March 27, 2022