

ADMINISTRATIVE PANEL DECISION

Ratiopharm GmbH v. Privacy Protection / QING SHUI / LIUQINGRU
Case No. D2022-0866

1. The Parties

The Complainant is Ratiopharm GmbH, Germany, represented by SILKA AB, Sweden.

The Respondent is Privacy Protection, United States of America / QING SHUI, China / LIUQINGRU, China.

2. The Domain Name and Registrar

The disputed domain names <ratiopharm.co> and <ratiopharm.xyz> are registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 15, 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 March 16, 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 18 and 21, 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 March 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2022.

The Center appointed Andrew Brown Q.C. 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 is a German pharmaceutical manufacturer. It is headquartered in Ulm, Germany and develops and distributes high quality, low-cost pharmaceuticals in many areas of medicine. It has branches in 25 countries in Europe, as well as in North and South America. Its products include about 750 prescription and non-prescription medicines sold through pharmacies.

In 2010, TEVA Pharmaceutical Industries Limited acquired the Complainant. At the time of acquisition, the Complainant was the sixth largest generic pharmaceutical company in the world.

The Complainant is the owner of the trademark RATIOPHARM in numerous jurisdictions. Details of its trademarks include, *inter alia*:

Mark	Jurisdiction and Number	Date	Class
RATIOPHARM (word mark)	Germany 919895	June 28, 1974	5
RATIOPHARM (word mark)	International Registration 508764	December 17, 1986	5
RATIOPHARM (word mark)	European Union Trade Mark 000189548	August 31, 1998	5
RATIOPHARM (word and device mark)	European Union Trade Mark 00921049	February 28, 2000	5

The Complainant also has its own domain name <rationpharm.com>, under which it has established its own online presence in relation to RATIOPHARM pharmaceuticals.

The disputed domain names were registered as follows:

- <rationpharm.co> on February 25, 2022;
- <rationpharm.xyz> on February 21 2022.

Both disputed domain names redirect to the website of a third party and are offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant asserts its rights in the RATIOPHARM trademark. The Complainant contends that the two disputed domain names solely comprise its RATIOPHARM trademark.

The Complainant notes the well-established principle in UDRP decisions that Top-Level Domains, such as ".com", ".net" and ".ai" are to be disregarded. It contends that this applies equally to the generic Top-Level-Domain ("gTLD") ".xyz" and to the country code Top-Level Domain ("ccTLD") ".co" used in the disputed domain names.

The Complainant's overall assertion is that it has established that the two disputed domain names are confusingly similar to its registered trademark RATIOPHARM.

The Complainant also contends that the Respondent had no rights or legitimate interests in the disputed domain names. In this regard, the Complainant states that:

(i) The Complainant has not authorized the Respondent to use its trademark for any reason or in any manner, including in or as part of a domain name.

(ii) The Complainant has found no evidence that the Respondent is known by the disputed domain names or the trademark RATIOPHARM.

(iii) The Respondent does not seem to own any trademark registrations in relation to the disputed domain names.

(iv) The disputed domain names resolve to parking sites where they are both offered for sale at USD 955, being a sum clearly in excess of the cost of registration. The Complainant asserts that this does not amount to a *bona fide* offering of goods or services or legitimate noncommercial or fair use.

The Complainant contends that the Respondent did not intend to use the disputed domain names for any legitimate or fair use and that the Respondent has no rights or legitimate interests in the disputed domain names.

The Complainant contends that the disputed domain names were registered and are being used in bad faith.

As to registration in bad faith, the Complainant notes that the disputed domain names reproduce, in full, the RATIOPHARM trademark. The Complainant refers to and relies on the UDRP decision in *RatioPharm GmbH v. Khatuna Lomitashvili* WIPO Case No [D2021-1326](#) where the panel commented that it was inconceivable that the respondent (in that case) did not know the Complainant's RATIOPHARM trademark or, if he did not know, it was obvious that a simple Internet search would have revealed the Complainant's trademark, its website, and prior rights.

Further, the Complainant claims that only someone familiar with its RATIOPHARM mark and activities would have registered two domain names on very close dates, with the same registrar, and which are connected to identical websites offering the disputed domain names for sale for the same sum, in excess of the costs of registration.

The Complainant claims it is impossible to believe that the Respondent would have chosen the disputed domain names if it did not have the Complainant, its trademark and its activity in mind.

As to use in bad faith, the Complainant claims that the Respondent has acquired the disputed domain names primarily for the purpose of selling these to the Complainant or to a competitor for valuable consideration in excess of documented out-of-pocket costs directly related to the two disputed domain names.

The Complainant points to the fact that both disputed domain names are for sale for USD 955.

The Complainant also invokes the passive holding doctrine to claim that there can still be a finding of bad faith use, even though the disputed domain names are not in active use.

Finally, the Complainant requests the Panel accept the filing of a consolidated Complaint regarding the two disputed domain names.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Preliminary Matter – Consolidation of Respondents

The Complaint was initially filed against a privacy service, appearing as the registrant for both disputed domain names in the publicly-available WhoIs. In its Registrar Verification, the Registrar confirmed the underlying registrant of the disputed domain name <ratiopharm.co> to be QING SHUI and of the disputed domain name <ratiopharm.xyz> to be LIUQINGRU. Accordingly, the Complainant submitted an amendment to the Complaint adding such registrant details and requesting consolidation of this dispute against the registrants of both disputed domain names, namely because: both disputed domain names target the same RATIOPHARM trademark, both resolve to an identical website, both were registered within three days of each other, both were registered with the same Registrar, and both have the same postal address and phone number in their respective registrant contact details.

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) sets out criteria that UDRP panels typically evaluate when a complaint is filed against multiple respondents, such criteria being: “whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

Taking into account the circumstances of the case, including the contentions put forward by the Complainant and the lack of objection by the Respondent, the Panel finds clear evidence that the disputed domain names are subject to common control, that consolidation would be fair and equitable to all Parties, and that procedural efficiency would be served by accepting consolidation. Accordingly, the Panel accepts the Complainant’s request for consolidation, and has referred to the “Respondent” in the singular throughout this Decision.

B. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of its RATIOPHARM trademark in Germany, as an International Registration, and in the European Union, for goods in class 5. It has provided evidence of extensive use of its RATIOPHARM trademark in Europe and internationally for some 40 years.

It is the Panel’s view that the Complainant has clearly and sufficiently demonstrated its rights in the RATIOPHARM trademark. The Panel is satisfied that the Complainant is well known by its RATIOPHARM trademark as a supplier of pharmaceuticals and medicines.

The Complainant’s RATIOPHARM trademark is wholly incorporated and clearly recognizable in the disputed domain names.

The Panel accepts that the disputed domain names are identical to the Complainant’s RATIOPHARM trademark, and finds in favor of the Complainant on the first limb.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain names, among other circumstances, by showing any one of the following elements:

- (i) that before notice of the dispute, the Respondent used or made 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) that the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the RATIOPHARM trademark pursuant to paragraph 4(c) of the Policy. The Complainant had (prior) rights in the RATIOPHARM trademark which well precede the Respondent's registration of the two disputed domain names.

The Panel is satisfied that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names. Both of these are listed for sale at USD 955 and there is no evidence of any prior legitimate use of the disputed domain names by the Respondent prior to their listing for sale.

The Respondent has failed to show that it has acquired any rights or legitimate interests in respect to the disputed domain names or that the disputed domains have been used in connection with a *bona fide* offering of goods and services. The Respondent had the opportunity to demonstrate its rights or legitimate interests, but it did not reply to the Complaint.

Moreover, the nature of the disputed domain names, being identical to the Complainant's RATIOPHARM trademark, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

D. Registered and Used in Bad Faith

The Panel is also satisfied that the disputed domain names have been registered in bad faith for the following reasons:

- (i) The Panel is satisfied that the Complainant's RATIOPHARM trademark is well known for pharmaceuticals and medicines. The Panel is further satisfied that the Respondent must have been aware of the Complainant's RATIOPHARM trademark at the times of registration of the disputed domain names.
- (ii) Even the most cursory trademark or other online search of existing domain names or trademarks prior to the registrations by the Respondent of the disputed domain names would have instantly revealed the Complainant and its RATIOPHARM trademark. See, in this regard, section 3.2.2 of the [WIPO Overview 3.0](#).

(iii) The fact that the Respondent registered two separate domain names incorporating the mark RATIOPHARM, without additional elements, shows a level of deliberation and consideration. Further and importantly, the price at which the disputed domain names are listed is at such a level that the Panel is warranted in finding that registrations of them was a money-making enterprise.

The Respondent has been given the opportunity to respond to the Complaint but has not done so. The Panel infers from all the facts, and from the Respondent's failure to respond, that the Respondent was well aware of the Complainant and its prior rights in the RATIOPHARM trademark when it registered both domain names.

The Panel is also satisfied that the disputed domain names have been used in bad faith for the following reasons:

(i) The Respondent's listing of both disputed domain names, wholly incorporating the RATIOPHARM mark, for USD 955 satisfies the Panel that the Respondent registered the disputed domain names primarily for the purpose of selling these to the Complainant or to a competitor of the Complainant for valuable consideration in excess of documented out-of-pocket costs directly relating to each registration.

(ii) Again, the Respondent failed to respond to the Complaint entitling the Panel to draw this conclusion from the Respondent's clearly documented activities.

Accordingly the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor of the Complainant.

7. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <ratiopharm.co> and <ratiopharm.xyz>, be transferred to the Complainant.

/Andrew Brown Q.C./

Andrew Brown Q.C.

Sole Panelist

Date: May 2, 2022