

ADMINISTRATIVE PANEL DECISION

Sanofi v. Privacy Protect, LLC (PrivacyProtect.org) / kamau cralcanvas,
kamau

Case No. D2022-2143

1. The Parties

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

The Respondent is Privacy Protect, LLC by PrivacyProtect.org, United States of America (“United States”) / kamau cralcanvas, kamau, United States.

2. The Domain Name and Registrar

The disputed domain name <buyambienmeds.online> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 June 15, 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 June 15, 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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on July 15, 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, Sanofi, is a company incorporated in Paris, France, and is a leading French multinational pharmaceutical company, one of the largest multinational pharmaceutical companies by prescription sales. The Complainant is settled in more than 100 countries on all five continents employing 100,000 people.

The Complainant is the owner of several registrations of the trademark AMBIEN worldwide, including the United States trademark AMBIEN, registration No. 1808770, filed on January 5, 1993 and registered on December 7, 1993 for goods in international class 5.

The Complainant also owns and operates several domain names which contain the AMBIEN mark in its entirety, such as <ambien.com>, <ambien.eu>, <ambien.fr> and <ambien.us>.

The disputed domain name was registered on April 14, 2022. At the time of the filing of the Complaint, the disputed domain name resolved to a website that purportedly offered sale of pharmaceutical goods bearing the AMBIEN trademark. The disputed domain name does currently not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to the trademark AMBIEN in which the Complainant holds rights. The adjunction of the terms "buy", "meds" and "online" placed before and after the trademark AMBIEN in the disputed domain name are thus insufficient to alleviate the likelihood of confusion with the Complainant's AMBIEN mark.

The Complainant further asserts that the Complainant has never licensed or otherwise authorized the Respondent to use its trademark AMBIEN or to register any domain name that includes the mark. It is also clear that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name, nor that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, since there is nothing to prevent the proposed drugs from being counterfeit products, as the prices are all discounted, and do not reflect the actual price of genuine AMBIEN drugs.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith. The Respondent must undoubtedly have been aware of the Complainant's AMBIEN trademark, and of the risk of deception and confusion that would inevitably arise from the registration of the disputed domain name. This suggests that the Respondent acted with opportunistic bad faith in registering the disputed domain name in order to make an illegitimate use of it.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark AMBIEN, since the disputed domain name contains this mark in its entirety. The addition of the terms "buy" and "meds" does not prevent confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level-Domain ("gTLD") ".online" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is obvious from the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use the trademark AMBIEN.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this. Furthermore, the way the Respondent has used the confusingly similar disputed domain name for a website that appears to have offered counterfeit AMBIEN products, supports a finding that the Respondent lacks rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, 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 location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the coined nature of the Complainant's trademark AMBIEN and the way that the disputed domain name has been used, it is obvious to the Panel in the current circumstances that the Respondent registered the disputed domain name in bad faith.

The disputed domain name has been used for a website, which clearly gave the Internet users the impression that the website offered genuine AMBIEN products. However, the Complainant has furnished evidence that indicates that the goods that were offered for sale on the website at the disputed domain name may well be counterfeited AMBIEN products. The Panel therefore finds that there can be no doubt that the disputed domain name has been used in bad faith to intentionally attempt "to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website". The fact that the website appears to be unavailable at present does not alter this finding.

Noting that the disputed domain name incorporates the Complainant's distinctive trademark AMBIEN; that the Respondent has not replied to the Complainant's contentions; and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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 <buyambienmeds.online> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: August 2, 2022