

ADMINISTRATIVE PANEL DECISION

L. Perrigo Company, and Perrigo Pharma International DAC v. Domain Administrator, Fundacion Privacy Services LTD
Case No. D2022-2450

1. The Parties

The Complainants are L. Perrigo Company, United States of America (“United States”), and Perrigo Pharma International DAC, Ireland, both internally represented.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <wwwperrigo.com> is registered with Media Elite Holdings Limited dba Register Matrix (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that 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 July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on August 18, 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 Complainants are part of the group Perrigo, which is a leading global self-care company. Its activities started over 130 years ago, in the United States. In recent decades the Complainants have grown significantly, and as per Complaint: “Today, Perrigo Company is dedicated to making lives better by bringing Quality Affordable, Self_Care Products that consumers trust everywhere they are sold. The Company is a leading provider of over-the-counter health and wellness solutions that enhance individual well-being by empowering consumers to proactively prevent or treat conditions that can be self-managed”.

As a basis for their Complaint, the Complainants rely on numerous trademark rights, including the European Union trademark PERRIGO (word) No. 176883 registered on December 16, 1999, and the United States federal trademark PERRIGO (word) No. 74260544, registered on June 1, 1993.

The disputed domain name <wwwperrigo.com> was registered on February 24, 2022 and resolves to a parking page using pay-per-click (“PPC”) links, namely “biopharmaceutical company”, “pharmaceutical company”, and “personal care services”. This Panel has accessed one of these links, which referred to the website of a pharmaceutical company.

5. Parties’ Contentions

A. Complainant

In essence, the Complainants argue as follows:

On the first element of the Policy, the Complainants indicate that the disputed domain name reproduces identically the trademark PERRIGO, preceded by the prefix “www”, which stands for “World Wide Web”.

On the second element of the Policy, the Complainants indicate that the Respondent does not have rights of legitimate interests over the disputed domain name. They have also performed a search which did not reveal any trademark “perrigo” registered in the name of the Respondent.

On the third and final element of the Policy, the arguments of the Complainants are twofold:

Regarding the registration of the disputed domain name in bad faith, the Complainants claim that “the Respondent didn’t choose the Disputed Domain Name wwwperrigo.com by chance, he registered it with the knowledge of Perrigo’s activities, reputation and trademarks, hoping that Internet users would type the official website address www.perrigo.com without the dot after the prefix www.”.

Regarding the use of the disputed domain name in bad faith, the Complainants argue in essence that, with the operation of a pay-per-click scheme, the Respondent attempts to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainants’ trademarks.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainants prove all of the following three elements in order to be successful in these proceedings:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainants, under the first requirement of paragraph 4(a) of the Policy, need to establish that the disputed domain name is confusingly similar to a trademark or a service mark in which they have rights.

It is generally accepted that the test of confusing similarity is reasonably straightforward and functions primarily as a standing requirement. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The disputed domain name reproduces identically the trademarks PERRIGO of the Complainants, preceded by the sequence "www". As configured in the disputed domain name, the sign PERRIGO is perceived immediately. The Panel considers therefore that the disputed domain name is confusingly similar to the trademarks of the Complainant.

Accordingly, the Panel finds that the first element of the Policy is satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the burden of proof shifts to the respondent of demonstrating rights or legitimate interests in the disputed domain name with the burden of proof always remaining on the complainant. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Complainants have argued that the Respondent is not commonly known by the disputed domain name. Besides, the Respondent does not own rights over the disputed domain name. The Panel also notes that the disputed domain name is not used in connection with a *bona fide* offering of goods or services.

Accordingly, and based on the facts and arguments set out herein, and absent specific allegations of a legitimate interest by the Respondent, the Panel finds that the Complainants have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainants must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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.

Clearly, the Respondent targeted the Complainants and its trademark PERRIGO when configuring the disputed domain name. The objective of the Respondent is to confuse the users with the institutional website of the Complainants, which is accessible through the address "www.perrigo.com". Overall, the insertion of the letters "www" before the trademark is a very classic form of cybersquatting.

Regarding bad faith use, the Panel notes that the disputed domain name is used for a PPC scheme, as described above. Even if the links are generated automatically, this is bad faith use in accordance with section 3.5 of [WIPO Overview 3.0](#): "Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith".

In addition to the operation of the PPC scheme, this Panel cannot foresee any legitimate use of the disputed domain name, as configured. It creates a significant likelihood of confusion with the trademark PERRIGO of the Complainants, which has been used widely for over 130 years. A finding of bad faith passive holding would also have been in order.

Accordingly, the Panel finds that the third element set out in paragraph 4(a) of the Policy is also satisfied.

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, <www.perrigo.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: September 1, 2022