

ADMINISTRATIVE PANEL DECISION

Covis Pharma GmbH v. Name Redacted

Case No. D2022-2853

1. The Parties

The Complainant is Covis Pharma GmbH, Switzerland, represented by Brand Enforcement Team 101 Domain, United States of America (“USA”).

The Respondent is Name Redacted.¹

2. The Domain Names and Registrar

The disputed domain names <covispharma.org> and <covispharma.net> are registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2022, initially as separate Complaints in respect of each disputed domain name. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 3, 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 August 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 19, 2022, the Complainant filed an amended Complaint and requested for the disputed domain name <covispharma.net> to be added to this proceeding.

The Center verified that the Complaint, together with 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain names. In light of the potential identity theft, the Panel has redacted the Respondent's name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain names, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2022. The Respondent did not submit a formal response. Accordingly, the Center notified the Respondent's default on September 22, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on September 27, 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.

On September 27, 2022, the Respondent sent an email to the Center repudiating any connection with the proceeding. In a further email to the Center on September 28, 2022, the Respondent denied knowledge of the Complainant's website and disavowed any connection with this proceeding.

4. Factual Background

The Complainant, the parent company of Covis Pharmaceuticals, has been in the business of wholesale prescription drugs since October 2011. The Complainant operates in some 50 countries.

Covis Pharmaceuticals is the registrant of the trademark COVIS PHARMA at the United States Patent and Trademark Office, principal register, registered on August 21, 2012, registration number 4193537, in class 35, with first use in commerce stated to be November 2, 2011. The trademark consists of a design comprising three overlapping squares in shades of blue next to the words COVIS PHARMA in black.

No information is available about the Respondent except for the contact details provided to the Registrar at the time of registration of the disputed domain names on December 23, 2021. The Respondent as named in the Complaint has sent a late informal reply implying that their name appears in this proceeding as a consequence of potential identity theft. The disputed domain names do not resolve to active websites but one of them, <covispharma.org>, has been used as the basis of an email address.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The disputed domain names, except for their respective generic Top-Level Domains ("gTLD"), ".org" or ".net", contain the entirety of the Complainant's trademark words and are identical to the trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has not licensed the Respondent to use the Complainant's trademark for any purpose. The Complainant has found no evidence that the Respondent has a registered trademark similar to the Complainant's trademark and the Respondent has no legitimate connection with the Complainant's trademark. The Respondent is not commonly known by the disputed domain names. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names and they do not resolve to any websites.

The Complainant says the disputed domain name <covispharma.org> has been incorporated in an email address used by the Respondent to mispresent itself falsely as being the Complainant, in order to contact a customer of the Complainant, which cannot be a *bona fide* usage. This incident was reported to the Complainant by the customer, however there have been no reports of similar activity in connection with the disputed domain name <covispharma.net>.

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

In December 2021, the disputed domain name <covispharma.org> was used as the sender's email address in a fraudulent communication sent to a customer of the Complainant, who noticed the discrepancy in the address and treated it as suspicious. Furthermore, the email used the real name of an actual employee of the Complainant, and carried a signature block that included the Complainant's trademark design. The email contained two attachments in PDF format.

The Complainant also says the effect of the registration of the disputed domain names is to prevent the Complainant from reflecting its trademark in the corresponding domain names and that the Complainant would likely want to own those disputed domain names. The Respondent is also disrupting the Complainant's business by impersonating an employee of the Complainant.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

The Respondent sent an email to the Center late on September 27, 2022, after the Panel had been appointed (and after the due date of September 18, 2022 for a Response). In the email, and in a subsequent email dated September 28, 2022, the Respondent disclaimed all knowledge of the dispute.

6. Discussion and Findings

A. Procedural Matters

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

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

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

Paragraph 1 of the Rules states that “the holder of a domain-name registration against which a complaint is initiated” is the Respondent. The Complainant had no option but to name the alleged Respondent as disclosed by the Registrar.

The email address from which the alleged Respondent communicated, and the physical address cited in the communications, are those of a prominent USA travel media company. In the light of the Respondent's representations denying all knowledge of the Complainant's website and disclaiming any connection with this proceeding, and in all the circumstances surrounding this case, the Panel accepts on the balance of probabilities that the person named as Respondent has been the subject of potential identity theft, and accordingly their name has been redacted from this Decision.

The Panel is satisfied that the Center has acted as required under paragraph 2 of the Rules in order to attempt to serve Notification of Complaint and Commencement of Administrative Proceeding upon the true Respondent.

B. Identical or Confusingly Similar

The trademark registration evidence produced by the Complainant shows its trademark to be a design incorporating prominently the word COVIS, and less prominently the word PHARMA, to which latter word no claim to exclusivity is made except as part of the trademark. The design incorporates three blue squares to the left that do not dominate the trademark or encroach on its wording. Since the permitted character set in domain names cannot incorporate spaces, the Panel finds the disputed domain names to be identical to the textual element of the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy. The gTLD ".org" or ".net" need not be taken into account.

The Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has stated a *prima facie* case to the effect that the Respondent does not have rights or legitimate interests in respect of the disputed domain names. The Respondent has not been licensed by the Complainant to use the Complainant's trademark and has no legitimate connection with the Complainant.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".

According to the evidence, the disputed domain name <covispharma.org> has been used by the Respondent as the basis of an email address by means of which the Respondent has represented itself falsely as the Complainant, which cannot be a *bona fide*, fair or legitimate use. There is no evidence the Respondent has used that disputed domain name or a similar name in connection with a *bona fide* offering of goods or services. There is no evidence the Respondent has been commonly known by that disputed domain name.

There is no evidence the disputed domain name <covispharma.net> has been used for any *bona fide*, fair or legitimate purpose, or for any purpose at all, and there is no evidence the Respondent has been commonly known by that disputed domain name.

The Respondent has not responded formally or asserted any rights or legitimate interests in the disputed domain names under paragraphs 4(c)(i), (ii) or (iii) of the Policy or otherwise.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that each disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found alternatively by the Panel.

The disputed domain names do not resolve to any active website and there is no evidence they have been used for such a purpose. The disputed domain name <covispharma.org>, however, has been used as the basis of an email address, impersonating one of the Complainant’s employees.

On the apparent date of December 23, 2021, *i.e.*, the date of registration of the disputed domain names, an email was received by a client of the Complainant from an email address ending in <covispharma.org>, which evidently impersonated the real name of an employee of the Complainant (key names were redacted from the evidence). The signature block at the end contained a large exact copy of the Complainant’s design trademark in the same colour scheme of blue and black, with the prominent words COIVS and PHARMA. The email read (emphasis original):

“Good afternoon,

Please find the attached secured documents issued on behalf of Covis Pharma for your review. Should you have any questions, please do not hesitate to contact me.

Happy Holidays!!

Best Regards,
[signature redacted]”

Two files in PDF format were attached to the email, one of them with the file name “Covis Pharma.pdf” and the other with the file name “IMPORTANT Covis Pharm...”. There is no evidence as to the contents of the PDF files, which may not have been opened. The email was referred to the Complainant which declared it to be false.

Having regard to all the evidence in respect of the disputed domain name <covispharma.org>, it may reasonably be concluded on the balance of probabilities that the Respondent’s intention was to attract an Internet user to the Respondent’s online location, namely its email address, by confusion with the Complainant, and may further be reasonably concluded that the Respondent had some nefarious purpose involving ultimate commercial gain in representing itself falsely as the Complainant. The Panel finds the Respondent to have used the disputed domain name <covispharma.org> in bad faith in terms of paragraph 4(b)(iv) of the Policy and with intent to disrupt the business of the Complainant in the terms of paragraph 4(b)(iii) of the Policy. Since the Complainant identified the Respondent’s email as fraudulent on the same date as its registration, it may reasonably be concluded that the disputed domain name <covispharma.org>

was registered in bad faith and for that purpose.

The Panel finds it more probable than not that the disputed domain name <covispharma.net>, although not actively used, was registered almost simultaneously with the disputed domain name <covispharma.org> for the same broad purpose, constituting registration in bad faith. Notwithstanding that the disputed domain name <covispharma.net> has been passively held, it has been held in numerous decisions since *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), that passive holding need not prevent a finding of use in bad faith. In the present case the Panel notes on the totality of the evidence that, among other circumstances, the Complainant's trademark is distinctive; there is no plausible use to which the disputed domain name could be put without conflict with the Complainant's rights in its trademark; and that the Respondent has not offered any Response. The disputed domain name <covispharma.net> is found to have been used in bad faith.

The disputed domain names <covispharma.org> and <covispharma.net> are found to have been registered and used in bad faith in the terms of 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, <covispharma.org> and <covispharma.net>, be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: October 11, 2022