

## **ADMINISTRATIVE PANEL DECISION**

Sanofi v. Hosting Concepts B.V. d/b/a Registrar.eu  
Case No. D2022-4003

### **1. The Parties**

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

The Respondent is Hosting Concepts B.V. d/b/a Registrar.eu, Netherlands.

### **2. The Domain Name and Registrar**

The disputed domain name <ambienmedicines.com> is registered with Gandi SAS (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 27, 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 October 27, 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 November 3, 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 November 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2022. On November 8, 2022, the Center received an email communication from Hosting Concepts B.V. d/b/a Registrar.eu.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on December 1, 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 French multinational pharmaceutical company headquartered in Paris (France), and settled in more than 100 countries on all five continents, employing 100,000 people. It offers a wide range of patented prescription drugs to treat patients in seven major therapeutic areas, namely cardiovascular, thrombosis, metabolic disorders, oncology, central nervous system, internal medicine, and vaccines. Its consolidated net sales amounted to EUR 37.7 billion in 2021, and it is ranked fourth world's largest multinational pharmaceutical company by prescription sales.

The Complainant produces and sells a drug for the treatment of insomnia under the brand AMBIEN, and it owns various trademark registrations for this brand, including:

- French Trademark Registration No. 93456039, AMBIEN, registered on August 6, 1993, in class 5;
- European Union Trade Mark Registration No. 003991999, AMBIEN, registered on November 28, 2005, in class 5; and
- International Trademark Registration No. 605 762, AMBIEN, registered on August 10, 1993, in class 5, (collectively the "AMBIEN mark").

Prior decisions under the Policy have recognized the reputation of the AMBIEN mark.<sup>1</sup>

The Complainant further owns various domain names corresponding to its AMBIEN mark, including <ambien.com> (registered on April 12, 2000), which is used in connection with AMBIEN pharmaceutical products, and other domain names that are inactive, such as <ambien.net> (registered on April 12, 2000), <ambien.info> (registered on August 24, 2001), and <ambien.org> (registered on April 12, 2000).

The disputed domain name was registered on October 7, 2022, and at the time of this Decision it resolves to a parked page displaying various promotional Pay-Per-Click ("PPC") links to third-parties' websites in the pharmaceutical industry, under the sections "Pharmacy", "Sleeping Pills", and "Generic Viagra".<sup>2</sup>

#### 5. Parties' Contentions

##### A. Complainant

Key contentions of the Complaint may be summarized as follows:

The reputation of the AMBIEN mark has been recognized by various decisions under the Policy.

The disputed domain name is confusingly similar to the trademarks and domain names over which the Complainant has rights. The disputed domain name reproduces the AMBIEN mark in its entirety, which has no particular meaning and it is highly distinctive, with the addition of the generic term "medicines" for pharmaceutical products, and the generic Top-Level-Domain ("gTLD") ".com." The disputed domain name suggests to Internet users that it leads to a website that sells AMBIEN products.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never licensed or otherwise authorized the Respondent to use its trademarks or to register the disputed domain name. There is no relationship between the Parties. The Respondent has incorporated

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<sup>1</sup> See, among others, *Sanofi-Aventis, Aventis Inc. v. Searchology, Domain Registrant*, WIPO Case No. [D2007-0889](#); *Sanofi-Aventis v. Inet Bulgaria*, WIPO Case No. [D2007-0672](#); and *Sanofi v. Whois Privacy Service / Wyatt Henry*, WIPO Case No. [D2019-2826](#).

<sup>2</sup> At the time of the filing of the Complaint, the disputed domain name resolved to a parked page displaying various promotional PPC links to third-parties' websites in the pharmaceutical industry, under the sections "Laboratoire du Sommeil", "Ordonnance en Ligne" and "Insomnie que Faire" (Annex 12 of the Complaint).

the Complainant's trademark into the disputed domain name without authorization, and it is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to a parking website displaying PPC links, and it was registered only for attracting Internet users to click on the sponsored links for commercial gain.

The disputed domain name was registered and is being used in bad faith. Given the famous and distinctive nature of the AMBIEN mark, the Respondent is likely to have had, at least, constructive, if not actual notice, as to the existence of this trademark at the time it registered the disputed domain name. This suggests opportunistic bad faith in registering the disputed domain name in order to make an illegitimate use of it. The disputed domain name was registered for attracting Internet users to the Respondent's website by creating a likelihood of confusion with the AMBIEN mark and the Complainant's domain names. The Respondent is using the disputed domain name to divert Internet users to a parking website with links to commercial websites, in order to take benefit of the Complainant's reputation for commercial gain. The Respondent is trying to ride off the Complainant's worldwide reputation. This use of the disputed domain name is likely to cause irreparable prejudice to the Complainant's goodwill. The Complainant is often the victim of such commercial bad faith behavior as it has been stated in various previous decisions under the Policy.

The Complainant has cited previous decisions under the Policy that it considers supportive of its position, and requests the transfer of the disputed domain name.

## **B. Respondent**

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

In an informal communication addressed to the Center, the Respondent Hosting Concepts B.V. d/b/a Registrar.eu indicated that the disputed domain name was registered by one of its customers, namely "Order medicine" and provided the contact details of this entity that were on its records.

## **6. Discussion and Findings**

### **6.1. Procedural Issue – Identity of the Respondent**

The Respondent submits that another party (Order medicine, located in India) is the registrant of the disputed domain name, without providing any supporting evidence. The third party Order medicine has been copied in the Center's communication as of November 10, 2022, and Hosting Concepts B.V. d/b/a Registrar.eu was invited to forward the Notification of the Complaint, the Complaint and its corresponding Annexes to Order medicine if it considered that Order medicine may have an interest in the proceeding. However, Order medicine did not participate in the proceedings and did not make any statement either confirming or denying that it is the registrant of the disputed domain name.

Paragraph 1 of the Rules defines respondent as "the holder of a domain-name registration against which a complaint is initiated". The WhoIs record for the disputed domain name indicates that Gandi SAS is the Registrar. The Registrar has confirmed that the Respondent is the registrant of the disputed domain name.

In view of the above, the Panel will rely on the confirmation by the Registrar that the Respondent is the registrant of the disputed domain name and will proceed on this basis. The Panel notes that in any case, even if the registrant of the disputed domain name is different from the Respondent, the substantive issues to be considered are essentially the same, and all references to the Respondent in this decision shall be construed to include the actual registrant of the disputed domain name.

## 6.2. Substantive issues

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute by examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

### A. Identical or Confusingly Similar

The first element functions as a standing requirement under the Policy.

The Complainant indisputably has rights in the registered AMBIEN mark. The disputed domain name incorporates this trademark in its entirety, followed by the term “medicines”, which does not avoid the confusing similarity. The AMBIEN mark is recognizable in the disputed domain name, and the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

### B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the Respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, that may establish rights or legitimate interests in the disputed domain name in order to rebut the Complainant's *prima facie* case. However, the Respondent has not replied to the Complainant's contentions, not providing any explanation or evidence of rights or legitimate interests in the disputed domain name.

The use of the disputed domain name for a parked page displaying PPC links to third-parties' websites in the pharmaceutical industry cannot be considered a *bona fide* offering of goods or services under the Policy. Such use capitalizes and competes with the Complainant's reputation in the pharmaceutical sector under the AMBIEN mark.

The Complainant has further constructed a strong *prima facie* case that the Respondent is not commonly known by the disputed domain name, and has not been authorized to use the AMBIEN mark.

The Panel further considers that the disputed domain name generates an implied affiliation and risk of confusion. The incorporation of the AMBIEN mark followed by a term that refers to the pharmaceutical sector (“medicines”), where the Complainant's trademark is reputed, generates an implied affiliation and risk of confusion. The disputed domain name gives the impression of being owned by the Complainant or any of

its subsidiaries, and of being referred to a website providing information and commercializing the Complainant's AMBIEN medicines.

All the above-mentioned circumstances lead the Panel to conclude that the disputed domain name and the Respondent's conduct generate confusion or affiliation with the Complainant and its trademark (although no affiliation exists), and cannot be considered as a *bona fide* offering under the Policy.

These case cumulative facts and circumstances point to consider that the Respondent has not produced evidence to rebut the Complainant's *prima facie* case, and lacks of any rights or legitimate interests in the disputed domain name. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the AMBIEN mark is reputed in the pharmaceutical industry and the Complainant operates internationally, commercializing worldwide its AMBIEN pharmaceutical products for approximately 20 years;

(ii) the disputed domain name incorporates the Complainant's trademark adding a term that refers to the pharmaceutical industry ("medicines"), which may contribute to generate a risk of confusion or implied association, creating the impression that the disputed domain name refers to an official website or online store, authorized distributor or retailer commercializing the Complainant's AMBIEN products;

(iii) the disputed domain name resolves to a parked page displaying PPC links to third-parties' websites in the pharmaceutical industry;

(iv) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to reply to the Complaint.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered targeting the Complainant's trademark with the intention of obtaining a free ride on its established reputation, seeking to mislead Internet users to believe that there is a connection between the disputed domain name and the Complainant, to increase the traffic to the Respondent's site for a commercial gain, which constitutes bad faith.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element 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 name, <ambienmedicines.com> be transferred to the Complainant.

*/Reyes Campello Estebanz/*

**Reyes Campello Estebanz**

Sole Panelist

Date: December 13, 2022