

## **ADMINISTRATIVE PANEL DECISION**

Biological E. Ltd v. Vince Rivera

Case No. D2022-5009

### **1. The Parties**

The Complainant is Biological E. Ltd, India, represented by Kayser & Company, India.

The Respondent is Vince Rivera, United States of America (“United States”), self-represented.

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

The disputed domain name <corbevaxvaccine.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 28, 2022. On December 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 30, 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 (Domain Admin, privacy protect, LLC (PrivacProtect.org)) and contact information in the Complaint. There were some email exchange between the Parties and the Registrar regarding the expiry of the disputed domain name from January 2023 until February 8, 2023. On that date, the Registrar confirmed to the Center that the disputed domain name had been renewed. The Center sent an email communication to the Complainant on February 15, 2023 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 amended Complaint on February 21, 2023.

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 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Response was filed with the Center on March 21, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on March 30, 2023. 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 an Indian vaccine company established in 1953. It started manufacturing vaccines in 1962.

The Complainant is the owner of the Indian trademark CORBEVAX with registration No. 4793901, registered on December 24, 2020 for goods in International Class 5 (the “CORBEVAX trademark”).

The disputed domain name was registered on January 14, 2022. It is currently inactive.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant submits that in 2020, it in-licensed a COVID-19 vaccine candidate for development and commercialization and adopted the CORBEVAX trademark for it. The CORBEVAX trademark was coined and created by the Complainant by fusing the elements “cor” (derived from “Corona”), “be” (derived from the Complainant’s name “Biological E. Ltd.”), and “vax” (a popular suffix/abbreviation for “vaccine”). The CORBEVAX vaccine has been approved in India for emergency use for children and as a heterologous COVID-19 booster dose for adults. The Government of India has placed an order for 300 million doses of the CORBEVAX vaccine.

The Complainant states that the disputed domain name is confusingly similar to its CORBEVAX trademark, because it incorporates the trademark entirely. Therefore, Internet users accessing the website at the disputed domain name may consider it to be the official website for the CORBEVAX vaccine of the Complainant and be deceived that the information available there has been approved by the Complainant or that the website is associated with the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant points out that the Respondent registered the disputed domain name after the Complainant registered the CORBEVAX trademark, and has not used it afterwards, which, according to the Complainant, indicates that the Respondent has no interest in the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant states that the CORBEVAX trademark is a coined word and has acquired extensive goodwill and reputation across the globe since the vaccine supplied and sold under it has first-rate characteristics. According to the Complainant, the Respondent has secured the registration of the disputed domain name with bad faith intent to sell it to the highest bidder, and the chances that the Respondent has created it himself are remote and negligible, especially as it represents a combination of the CORBEVAX trademark with the word “vaccine” – the exact product for which the CORBEVAX trademark is used by the Complainant.

##### **B. Respondent**

The Respondent maintains that the disputed domain name is not the same as the Complainant’s trademark and that there is a significant difference between the two, because there are seven additional letters in the disputed domain name.

The Respondent maintains that the Complainant has no legal rights to the disputed domain name, because it never legally registered it. Rather, the Respondent has legitimate rights to the disputed domain name because it was the first to legally register it with the Registrar.

The Respondent maintains that it has not yet developed a website at the disputed domain name “due to critical time restraints”, and that it was registered in good faith and with an intention to develop it and provide valuable content, and not to confuse the public with the Complainant’s trademark.

## **6. Discussion and Findings**

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer or cancellation of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 Complainant has provided evidence that it is the owner of the CORBEVAX trademark. In view of this, the Panel accepts that the Complainant has established its rights in this trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD of the disputed domain name.

The disputed domain name incorporates the Complainant’s CORBEVAX trademark in combination with the dictionary word “vaccine”. The CORBEVAX trademark is easily recognizable. As discussed in section 1.8 of the [WIPO Overview 3.0](#), in cases where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the CORBEVAX trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it registered the disputed domain name after the Complainant registered the CORBEVAX trademark, and has not used it afterwards.

The Respondent argues that it has rights to the disputed domain name because it was the first to legally register it with the Registrar. The Respondent maintains that it has not developed a website at the disputed domain name yet “due to critical time restraints”, and that the disputed domain name was registered in good faith and with an intention to develop it and provide valuable content, and not to confuse the public with the Complainant’s trademark.

The disputed domain name incorporates the CORBEVAX trademark and the word “vaccine”, which is the very product marketed by the Complainant under this distinctive trademark, and the Respondent has not

provided any explanation why it has chosen this combination and for what purposes it intends to use it in the future. In any case, the fact that the Respondent was the first to register the disputed domain name does not as such give rise to rights or legitimate interests of the Respondent under the Policy. In the circumstances of the present case, it does not appear as likely to the Panel that the Respondent chose the disputed domain name by coincidence and for a purpose unrelated to the Complainant's trademark and vaccine. Rather, it appears as more likely that the Respondent knew of them and chose the disputed domain name precisely because it is confusingly similar to the Complainant's CORBEVAX trademark and refers to the respective vaccine of the Complainant, and would thus attract Internet users searching for them, which could bring financial gain to the Respondent. Such use would unfairly exploit the popularity of the Complainant's trademark without its consent, and the Panel does not regard it as legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Furthermore, where a domain name consists of a trademark plus an additional term UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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

Paragraph 4(b) of the Policy lists four illustrative 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 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 your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the CORBEVAX trademark and refers to the vaccine marketed by the Complainant under the same trademark. The Respondent has not provided any plausible explanation for the registration and use of the disputed domain name.

Taking the above into account, the Panel concludes that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the CORBEVAX trademark in an attempt to confuse and attract Internet users for financial gain.

The fact that the disputed domain name resolves to an inactive website does not prevent a finding of bad faith under the doctrine of passive holding, as any good faith use to which it may be put without the Complainant's consent appears implausible. See section 3.3 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

## 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 <corbevaxvaccine.com> be cancelled.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: April 13, 2023