

ADMINISTRATIVE PANEL DECISION

Sanofi v. Sergej San
Case No. D2023-1460

1. The Parties

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

The Respondent is Sergej San, United States of America.

2. The Domain Name and Registrar

The disputed domain name <aplavixp.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 April 4, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2023, 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 (redacted for privacy service) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 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 amendment to the Complaint on April 13, 2023.

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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 5, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on May 17, 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 a French multinational pharmaceutical company headquartered in Paris.

The Complainant is the owner of the following trademarks:

- French trademark PLAVIX number 93484877, registered on July 28, 1993, in class 5 in relation with pharmaceutical products;
- International trademark PLAVIX number 613041, registered on December 27, 1993, in class 5;
- French trademark PLAVIX number 97710388, registered on December 19, 1997, in class 5;
- International trademark PLAVIX number 694151, registered on June 16, 1986, in class 5.
- European Union trademark PLAVIX Logo number 001246099, filed on July 19, 1999, and registered on October 2, 2000, in class 5;
- European Union trademark PLAVIX number 002236578, filed on May 29, 2001, and registered on April 18, 2002, in class 5 in relation with pharmaceutical products;
- United Kingdom trademark PLAVIX number 2068394, registered on December 19, 1997 in class 5;
- Chinese trademark PLAVIX number 200009525, registered on July 30, 1998, in class 5;
- United States of America trademark PLAVIX number 2042583, registered on March 11, 1997, in class 5;
- Canadian trademark PLAVIX number TMA509097, registered on March 10, 1999, in class 5 in relation with pharmaceutical products;
- Japanese trademark PLAVIX number 4170873 registered on July 24, 1998, in class 5;
- Chinese trademark PLAVIX number 1386354 registered on April 21, 2000, in class 5;
- Chinese trademark PLAVIX number 1194317 registered on July 24, 1998, in class 5 in relation with pharmaceutical products.

The disputed domain name was registered on December 19, 2022, and resolves to a website apparently selling goods bearing the PLAVIX trademark.

5. Parties' Contentions

A. Complainant

The Complainant has developed and sold throughout the world under the trademark PLAVIX a drug indicated for the reduction of recurrence after ischemic cerebrovascular disorder. PLAVIX is an anti-platelet agent indicated for a number of atherothrombotic conditions.

The Complainant has a consolidated net sales of EUR 37,7 billion in 2021.

The Complainant holds the ranking 4th world's largest multinational pharmaceutical company by prescription sales.

The Complainant changed its name to Sanofi in May 2011.

The Complainant is a multinational company settled in more than 100 countries on all 5 continents employing 100,000 people. The new group benefits from a large portfolio of high-growth drugs.

The Complainant, with an R&D investment of EUR 5.9 billion in 2018, includes 83 projects in clinical development, 35 of which are at advanced stages.

The Complainant offers a wide range of high-growth drugs, with several pharmaceutical blockbusters, amongst which PLAVIX which is one of the two leading drugs in the category of thrombosis medicines. It is one of the world's 10 leading medicines, and to date, over 100 million patients throughout the world have been treated with PLAVIX.

PLAVIX has been commercialized since 1998, first in the United States of America and then in Germany and in the United Kingdom. PLAVIX is available in over 115 countries (including North America, Türkiye, Greece; Belgium, Portugal, Hungary, France, South Korea, India, China, Australia, New Zealand, Mexico, Brazil, Netherlands).

The disputed domain name entirely reproduces, as the dominant component, the PLAVIX trademarks, which, as themselves, do not have any particular meaning and are therefore highly distinctive.

In comparison with the PLAVIX trademark, the disputed domain name uses the adjunction of the non-distinctive indefinite article "a" introducing and highlighting the distinctive word "plavix". Moreover, the difference is limited to the addition of the consonant "p" as the final letter and regardless of the generic Top Level Domain ("gTLD") extension ".com".

The disputed domain name appears furthermore to be indicative of the practice known as typosquatting.

The Complainant has never licensed or otherwise authorized the Respondent to use its trademarks or to register any domain name including the above-mentioned trademarks.

The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services.

The disputed domain name leads to a commercial website selling presumably fake PLAVIX goods at a discounted price. Given the famous and distinctive nature of the mark PLAVIX, the Respondent is likely to have had, at least, constructive, if not actual notice, as to the Complainant's marks at the time he registered the disputed domain name.

The Complainant argues that the disputed domain name was registered and is being used in bad faith since the same was used for attracting Internet users to the Respondent's website by creating a likelihood of confusion between the Complainant's trademarks and the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the Complainant is deemed to have

prevailed; a respondent's default is not necessarily an admission that the Complainant's claims are true (See section 4.3 of the WIPO page 3 Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that: (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the trademark PLAVIX on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). Mere addition of the letter "a" as well as the inclusion of the letter "p" at the end does not prevent a finding of confusing similarity with the Complainant's marks. As noted in [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element".

Similarly, the gTLD ".com" is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark (see also section 1.11 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the Respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name. The Respondent is not known under the disputed domain name.

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

Accordingly, the Panel finds that the Complainant satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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) (ii) circumstances indicating that the respondent 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) (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainant and its PLAVIX trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the PLAVIX mark at the time the disputed domain name was registered. Bad faith can be presumed based on the widely evidenced recognition of the Complainant's marks and moreover can be imputed from the use made of the disputed domain name, such that the Respondent was aware or should have been aware of the Complainant's well-known marks and claims of rights thereto.

The Panel finds that the Respondent has registered the disputed domain name that contains the Complainant's trademark PRAVIX, merely including the letters "a" and "p". This kind of conduct is considered as an act of "typosquatting" or registering a domain name that is a common misspelling of a mark in which a party has rights and has often been recognized as evidence of bad faith registration per se. See *ParagonGifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#) (citing *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)); *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting", by itself, is evidence of the bad faith registration of a domain name). The Panel concurs with this approach.

In the Panel's view, the Complainant's mark is famous and registration by the unrelated Respondent creates a presumption of bad faith in this case. On this subject, section 3.1.4 of the [WIPO Overview 3.0](#) says: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The Panel is satisfied that by directing the disputed domain name to a commercial website allegedly offering the Complainant's goods, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website

(see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. In addition, the use of the disputed domain name for phishing, supported by the Complainant's claims and evidence, affirms a finding of bad faith (see [WIPO Overview 3.0](#), section 3.4).

The Complainant points out that the Respondent is hiding its identity behind a Whois privacy wall. It is well-established that this, too, can be further *prima facie* evidence of bad faith in certain circumstances. Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name. Consequently, the Panel finds that the disputed domain name was registered and is being used by the Respondent in bad faith within 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 name, <aplavixp.com>, be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: May 31, 2023