

ADMINISTRATIVE PANEL DECISION

Sanofi v. Alex Cure

Case No. D2023-1586

1. The Parties

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

The Respondent is Alex Cure, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <buyambien.online> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (“ – ”) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 13, 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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on May 23, 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. The Complainant is the owner of the AMBIEN trademark worldwide, which is evidenced by multiple trademark registrations around the world, such as:

- French trademark AMBIEN, No. 93456039, registered on February 19, 1993
- European Union trademark AMBIEN, No. 003991999, registered on November 28, 2005
- International trademark AMBIEN, No. 605762, registered on August 10, 1993
- United States trademark AMBIEN, No. 1808770, registered on December 7, 1993.

The Complainant also owns several domain names consisting of the AMBIEN trademark, such as <ambien.com>, <ambien.net>, <ambien.info> and <ambien.org>.

The Respondent registered the Domain Name on November 21, 2022. The Domain Name used to direct to a website offering for sale AMBIEN medicine and other medications. Currently, the Domain Name directs to a parked page comprised of pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

The Complainant alleges that it is a French multinational pharmaceutical company, which is the fourth largest pharmaceutical company by prescription sales in the world.

The Complainant claims that the Domain Name is identical or confusingly similar to its registered trademark AMBIEN because the Domain Name incorporates its distinctive AMBIEN trademark in its entirety. The Complainant asserts that addition of the descriptive terms "buy" and "online" in the Domain Name is insufficient to avoid confusing similarity. According to the Complainant, the likelihood of confusion between the Domain Name and the AMBIEN trademark is exacerbated by the trademark's notoriety.

The Complainant claims that the Respondent has no rights or legitimate interests in the Domain Name, because his name has no resemblance with the distinctive AMBIEN mark. The Complainant alleges that the Respondent has neither prior rights nor legitimate interests in the well-known AMBIEN trademark. Further, the Complainant asserts it has given no license or authorization of any kind to the Respondent to use the AMBIEN trademark. In the Complainant's view, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, nor does he use it in connection with *bona fide* offering of goods or services because the Respondent is using the Domain Name in connection with an online platform selling medications. The Complainant contends that the website under the Domain Name offers competing products for sale along with purported AMBIEN products.

The Complainant asserts that the Respondent registered the Domain Name in bad faith because the Respondent registered the Domain Name that is identical or confusingly similar to the Complainant's well-known AMBIEN trademark many years after the Complainant registered its trademark. The Complainant claims that the Domain Name was registered for the purpose of attracting Internet users to the Respondent's website and taking unfair advantage of the Complainant's reputation by creating false association with the Complainant. The Complainant further alleges that the Domain Name is being used in bad faith because the Respondent is using the Domain Name to direct to a website for the purposes of gaining unfair advantage of the Complainant's trademark's goodwill and reputation. The Complainant alleges that the Respondent registered and used the Domain Name for the purpose of disrupting the Complainant's business.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns multiple trademark registrations for the AMBIEN trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."¹ It is well-established that the applicable generic Top-Level Domain ("gTLD") should be disregarded under the confusing similarity test as a standard registration requirement and "the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element".²

The Domain Name consists of the word "buy", the Complainant's AMBIEN trademark and the gTLD ".online". Because the Complainant's AMBIEN trademark is recognizable within the Domain Name, the addition of the word "buy" does not prevent finding of confusing similarity. The gTLD ".online" is disregarded from the assessment of confusing similarity. Therefore, the Domain Name is confusingly similar to the Complainant's AMBIEN trademark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the respondent's 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

¹ Section 1.8, [WIPO Overview 3.0](#).

² Section 1.11, [WIPO Overview 3.0](#).

- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

There is no evidence that the Respondent has ever been commonly known by the Domain Name. The Domain Name is registered in the name of Alex Cure. The website under the Domain Name used to display the following information about its owner:

“Information on the Tramadol-seller.com Dispensary

The originator and founder of this website, Michael, has been leading a group of empowered persons in their attempts to provide the best service possible to people all around the world in the area of Tramadol selling since 2002”.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant’s AMBIEN trademark in domain names, or for any other purpose.

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name.

Previous UDRP panels have recognized that resellers or distributors using domain names containing complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and thus have a right or legitimate interest in such domain names in some situations.³

Outlined in the *Oki Data* case⁴, the following cumulative requirements must be satisfied for the respondent to make a *bona fide* offering of goods and services:

- “(i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to corner the market in domain names that reflect the trademark.”⁵

In this case, the Respondent’s use of the Domain Name does not satisfy requirements of such *bona fide* offering of goods and services. The Respondent used to use the Domain Name to direct to a website offering for sale AMBIEN together with medications manufactured by the Complainant’s competitors. There is no evidence whether the medications are genuine. Nor did the website disclose the registrant’s relationship with the Complainant.

Current use of the Domain Name also does not confer any rights or legitimate interests in the Domain Name on the Respondent. It is well-established that “the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”⁶. Here, the Respondent used to use the Domain Name to direct to a parked page comprised of pay-per-click links of the Complainant’s competitors. Therefore, the Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services.

³ Section 2.8, [WIPO Overview 3.0](#).

⁴ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

⁵ Section 2.8, [WIPO Overview 3.0](#).

⁶ Section 2.9, [WIPO Overview 3.0](#).

The Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent⁷. Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Under the third UDRP element, the Complainant is required to prove that the Domain Name was registered and is being used in bad faith.

Pursuant to paragraph 4(b) of the UDRP, any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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) the respondent has 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.

First, the Panel finds that it is likely that the Respondent registered the Domain Name in bad faith. Prior UDRP panels have inferred a respondent's knowledge of complainant's trademarks, where, like here, the Complainant's marks are widely known and "a respondent could not credibly claim to have been unaware of the mark".⁸ Prior UDRP panels held that the Complainant's AMBIEN trademark is widely known and connected to the Complainant⁹. Thus, the Respondent was clearly aware of the Complainant's widely known AMBIEN trademark because he registered the Domain Name containing the Complainant's widely known AMBIEN mark and used it to trade on the fame of the Complainant's mark.

Second, the Panel finds that the Respondent is using the Domain Name in bad faith because it intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating likelihood of confusion with the Complainant's mark as to the affiliation or endorsement of either the Respondent or its website. The Respondent's prior use of the Domain Name shows that the Respondent attempted to trade on the fame of the Complainant's product by using the Domain Name incorporating the AMBIEN mark to direct to the website at the Domain Name, which offers for sale the Complainant's products along with products of its competitors. Furthermore, the website used to display a copyright notice that read "AMBIEN online" along with information about "Tramadol-seller.com Dispensary", which created an impression of an association between the Respondent, the Complainant and a manufacturer of a different drug.

⁷ Section 2.1, [WIPO Overview 3.0](#).

⁸ Paragraph 3.2.2., [WIPO Overview 3.0](#).

⁹ *Sanofi-Aventis v. N/A*, WIPO Case No. [D2009-0705](#); *Sanofi-Aventis v. Max Egozin*, WIPO Case No. [D2010-1514](#); *Sanofi v. WhoisGuard Protected, WhoisGuard, Inc. / Vladimir Talko*, WIPO Case No. [D2018-0411](#); *Sanofi v. Margarita Pilan*, WIPO Case No. [D2019-0572](#).

In addition, the Panel finds that the following factors further support a finding that the Domain Name was registered and is being used by the Respondent in bad faith:

- (i) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use by it of the Domain Name; and
- (ii) It is difficult to conceive of any plausible use of the Domain Name that would amount to good faith use, given that the Respondent used the Domain Name in bad faith.

Therefore, the Panel finds that the Domain Name was registered and is being used in bad faith. The third element of the UDRP has been proved.

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 Domain Name, <buyambien.online>, be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: June 6, 2023