

ADMINISTRATIVE PANEL DECISION

Astellas Pharma Inc. v. Carol Stephens

Case No. D2023-2033

1. The Parties

The Complainant is Astellas Pharma Inc., Japan, represented internally.

The Respondent is Carol Stephens, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <astellasusafoundation.org> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 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 May 17, 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 May 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 13, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 15, 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 globally active pharmaceutical manufacturer, with operations in Japan, the United States and Europe. It is the owner of a number of trademark registrations for the sign “ASTELLAS” (the “ASTELLAS trademark”), including the following:

- the United States trademark ASTELLAS with registration No. 3195446, registered January 9, 2007 for goods and services in International Classes 1, 5, 10 and 44; and
- the United Kingdom trademark ASTELLAS with registration No. UK00002372794, registered on July 29, 2005 for goods and services in International Classes 1, 5, 10 and 44.

The disputed domain name was registered on December 7, 2009. It currently resolves to a website describing charity activities of an entity designated as “AUSAF”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its ASTELLAS trademark, because it incorporates the trademark and the corporate name of the Complainant with the addition of the geographic term “USA”, and this combination appears as denoting the website of the United States affiliate of the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the names “Astellas” or “Astellas USA”, has no relationship with the Complainant, and has not been authorised to use the Complainant’s ASTELLAS trademark. The Complainant points out that the ASTELLAS trademark forms the dominant part of its worldwide corporate name and is well-known within the pharmaceutical sector.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the disputed domain name takes unfair advantage of the Complainant’s ASTELLAS trademark and is being unfairly used to the detriment of the Complainant’s rights in this trademark and in its corporate name.

The Complainant explains that since 2005, its affiliate in the United States, Astellas Pharma US, operated a standalone philanthropic organisation known as the “Astellas USA Foundation” which used the disputed domain name. Later, a corporate decision was made to defunct that organisation and other relevant intellectual property and to rebrand it to “Astellas Global Health Foundation” whose website is now located at the domain name <astellasglobalhealthfoundation.org>. Following the abandonment of the disputed domain name by the Complainant’s affiliate, it started being used to intentionally confuse and deliberately mislead the public into thinking that they have accessed a genuine website of the Complainant. The Complainant believes that the Respondent is now intentionally attempting to attract for commercial gain Internet users to its website at the disputed domain name by creating a likelihood of confusion with the Complainant’s ASTELLAS trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or of the charity services described on it.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the ASTELLAS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the ASTELLAS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "usa" and "foundation") may bear on assessment of the second and third elements, the Panel finds that the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the ASTELLAS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- The Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The disputed domain name is confusingly similar to the ASTELLAS trademark and to the Complainant's corporate name and coincides with the name of a former philanthropic organisation (Astellas USA Foundation) that was affiliated to the Complainant's group of companies and used the disputed domain name for its activities. The Respondent has not submitted a Response. It has not given any plausible explanation why it has acquired the disputed domain name and has disputed the evidence submitted by the Complainant. This evidence shows that the disputed domain name is currently used for the purposes of what appears to be a charitable entity referred to as "AUSAF" and that the content of the associated website largely resembles or copies content referring to the former philanthropic organisation that was affiliated to the Complainant. There is no disclaimer for the lack of relationship with the Complainant and with its affiliated philanthropic organisation, and no indication of what "AUSAF" stands for. One could easily regard it as an abbreviation of the name of the Complainant's affiliate. It appears to the Panel that, given the confusing similarity between the disputed domain name and the Complainant's trademark and the name of its affiliate, and given the content of the associated website, the registration and use of the disputed domain name by the Respondent is an attempt to impersonate the Complainant or its former affiliate, and Internet users are likely to be misled to believe that the charity activities described on this website are affiliated with the Complainant. In the absence of any allegation or evidence to the contrary, the Panel does not regard such conduct as being carried out in good faith and giving rise to rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel therefore finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As discussed above, the disputed domain name is confusingly similar to the Complainant's ASTELLAS trademark and to its corporate name, and coincides with the name of a former philanthropic organization Astellas USA Foundation that was affiliated to the Complainant. The evidence shows that the associated website describes the charity activities of an entity referred to as "AUSAF" without mentioning what this abbreviation stands for and without including any disclaimer for the lack of relationship with the Complainant. The website states that it "gather[s] donations", "accept[s] sponsorships", "give[s] out scholarships", etc. Such activities involve the exchange of money and personal data, which visitors to the website may agree to do in the belief that they are dealing with the Complainant or with an affiliate of it. The Respondent has not submitted a Response and has not provided any credible explanation why the registration and use of the disputed domain name and the activities referred to on the associated website should be regarded as being carried out in good faith.

In view of the above, it appears as more likely than not that the Respondent has acquired and used the disputed domain name targeting the Complainant in an attempt to impersonate it or its former affiliated entity and thus to confuse and attract Internet users to its website for financial gain.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <astellausafoundation.org> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: June 29, 2023