

## **ADMINISTRATIVE PANEL DECISION**

F. Hoffmann-La Roche AG v. Vasiliy Mokhov  
Case No. D2023-2075

### **1. The Parties**

The Complainant is F. Hoffmann-La Roche AG, Switzerland, internally represented.

The Respondent is Vasiliy Mokhov, Republic of Moldova.

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

The disputed domain name <accutane.lol> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 10, 2023. On May 10, 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 (Redacted for privacy, Whois Privacy Protection Foundation) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 June 24, 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 10, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on July 13, 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 Swiss company, one of the world's leading research-focused healthcare groups in the fields of pharmaceuticals and diagnostics, with operations in over 100 countries.

The Complainant is the owner of a large portfolio of trademark registrations including the International Trademark ACCUTANE No. 840371, registered on December 6, 2004 (hereinafter referred to as "the Mark").

The Complainant provided evidence that the disputed domain name redirected first to an online pharmacy website offering for sale *inter alia* its prescription drug ACCUTANE, then resolved to a website with sponsored links, some of which related to the Mark.

The disputed domain name was registered on December 16, 2022.

#### **5. Parties' Contentions**

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

- (i) The Complainant submits that the disputed domain name reproduces the Mark, in which it has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.
- (iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.
- (v) The Complainant requests that the disputed domain name be transferred to the Complainant.

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

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

#### **6. Discussion and Findings**

##### **6.1. Procedural Aspects - Failure to respond**

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required

criteria for a transfer of the disputed domain name have been met, even in the event of a default. Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

## **6.2. Requirements of paragraph 4(a) of the Policy**

### **A. Identical or Confusingly Similar**

In comparing the Mark with the disputed domain name, it is evident that the latter consists of the Mark, followed by the generic Top-Level Domain ("gTLD") ".lol".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. 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 finds that the disputed domain name is identical to the Mark, which is incorporated in its entirety.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

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

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once a complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#) and section 2.1 of the [WIPO Overview 3.0](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name.

There is no evidence that the Respondent is known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business.

The disputed domain name redirected the public to an online pharmacy, then resolved to a website with sponsored links.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name. Furthermore, the Respondent did not reply to the cease and desist letter sent by the Complainant.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant cited *Pfizer Inc. v. jg a/k/a Josh Green*, WIPO Case No. [D2004-0784](#), and argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Mark in its entirety, and the use of the disputed domain name redirecting first to an online pharmacy, then resolving to a website with sponsored links, carries a risk of Internet user confusion.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

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

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it was established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, evidence of bad faith registration. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, considering the evidence provided by the Complainant that that the disputed domain name redirected Internet users to an online pharmacy website offering for sale, *inter alia*, its prescription drug ACCUTANE, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#). Further, the Panel finds that the use of the disputed domain name to display sponsored links, some of which related to the Mark, does not prevent a finding of bad faith.

Furthermore, the Panel notes that many UDRP panels have held that bad faith use of a domain name by a respondent may result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the pharmaceutical activity.

The Panel notes that the Respondent has submitted no evidence of any good faith use of the disputed domain name and finds it is not possible to imagine any plausible future active use of the disputed domain name that would not be illegitimate. The Panel finds that the Respondent registered the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Mark.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have an affirmative duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and that contravening that duty may constitute bad faith. See Policy, paragraph 2(b); *Nike, Inc. v. Ben de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

## **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, <accutane.lol>, be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: July 20, 2023