

ADMINISTRATIVE PANEL DECISION

Kite Pharma, Inc. v. Nagendra Singh, Ennerzyy
Case No. D2023-2221

1. The Parties

The Complainant is Kite Pharma, Inc., United States of America (“United States”), represented by Cynthia Smuzynska, United States.

The Respondent is Nagendra Singh, Ennerzyy, India.

2. The Domain Name and Registrar

The disputed domain name <kitemedicine.com> is registered with BigRock Solutions Pvt Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2023. The Respondent did not submit any formal Response. On June 13, and July 11, 2023, the Respondent sent informal communications to the Center, requesting a copy of the Complaint be sent to a different email address to the one provided by the Registrar, and indicating that the Respondent was trying to settle this case with the Complainant.

Accordingly, the Center notified the Parties with Commencement of Panel Appointment Process on July 11, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on July 19, 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.

Supplemental Filing

On July 19, 2023, the Center sent an email to the Panel with a Supplemental Filing from the Respondent that consists of copies of emails exchanged between the Parties which, in the Panel's view, only serve to show that the Parties failed to reach an agreement to settle this dispute amicably. Therefore, the Panel shall proceed to resolve the case on its merits, disregarding the Respondent's Supplemental Filing. In any event, even if the Panel had considered the Respondent's Supplemental Filing, this would not have changed the outcome of this case.

4. Factual Background

The Complainant, Kite Pharma Inc, is a biopharmaceutical company that develops cancer immunotherapy products. Founded in 2009, the Complainant was acquired by Gilead in 2017 for USD 11.9 billion and is now a wholly owned subsidiary of Gilead.

The Complainant continues to use the KITE and KITE PHARMA trademarks in connection with its products.

The Complainant owns various trademark registrations in many different jurisdictions for the KITE and KITE PHARMA marks, including the following.

United States Trademark Registration No. 6,108,120 KITE, registered on July 21, 2020 in class 40;

European Union Trademark Registration No. 013843206 KITE PHARMA, registered on July 21, 2015, in classes 5, 40 and 42;

Indian Trademark Registration No. 3051404 KITE PHARMA, registered on September 19, 2019, in classes 5, 40 and 42.

The Complainant also owns the domain name <kitepharma.com>, which was registered on June 11, 2009, and resolves to a website that has been used by the Complainant since 1910 with advertising for its then forthcoming pharmaceutical products and related medical services. The Complainant and others on its behalf have registered many domain names that incorporate the KITE trademark.

The disputed domain name was registered on January 11, 2023, and resolves to a webpage with a "Coming soon..." indication.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the trademarks KITE and KITE PHARMA in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The Respondent has cybersquatted on the disputed domain name containing the well-known KITE trademark for some illegitimate purpose, such as diverting traffic from the Complainant's genuine website or using the disputed domain name as a basis for phishing or another fraudulent scheme.

The Respondent registered the disputed domain name containing KITE over ten years after the Complainant entered the biopharmaceutical industry.

The Respondent has no connection to the Complainant and there is no legitimate reason for the Respondent to have registered the disputed domain name containing the Complainant's trademark.

The Respondent is taking advantage of the KITE trademark, which has a strong reputation in the pharmaceutical industry.

Finally, the Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the Complainant has proven to have rights in the trademarks KITE and KITE PHARMA.

Also, the Panels considers that the disputed domain name is confusingly similar to the Complainant's trademarks KITE and KITE PHARMA.

The disputed domain name incorporates the Complainant's trademark KITE in its entirety and a dominant element of the Complainant's trademark KITE PHARMA. The addition of the term "medicine" does not prevent a finding of confusing similarity with the trademark KITE nor with the trademark KITE PHARMA. See section 1.8 of the [WIPO Overview 3.0](#).

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademarks KITE

and KITE PHARMA in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it 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
- (ii) the respondent has been commonly known by the domain name, even if it 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under Section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." Here, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not formally replied to the Complainant's contentions and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's name, trademarks mentioned in Section 4 above (Factual Background), and the website <kitepharma.com> when it registered the disputed domain name on January 11, 2023. The Complainant's registration and use of its trademarks

and its biopharmaceutical industry business activities predate the disputed domain name registration by many years.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's distinctive KITE trademark in the disputed domain name creates a presumption of bad faith. Moreover, the addition of the term "medicine" in the disputed domain name, rather than helping to distinguish the disputed domain name from the Complainant's trademarks, contributes to the confusion among Internet users, as it conveys the idea of a concept related to the Complainant's pharmaceutical business.

The Respondent, when registering the disputed domain name, has targeted the Complainant's trademarks KITE and KITE PHARMA with the intention to confuse Internet users and capitalize on the fame of the Complainant's trademarks for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name resolves to a "coming son" page does not prevent a finding of bad faith under the doctrine of "passive holding". See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <kitemedicine.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: August 2, 2023