

ADMINISTRATIVE PANEL DECISION

Sarepta Therapeutics, Inc. v. Winfred Borger
Case No. D2023-2974

1. The Parties

Complainant is Sarepta Therapeutics, Inc., United States of America (“United States” or “U.S.”), represented by Arnold & Porter Kaye Scholer LLP, United States.

Respondent is Winfred Borger, United States.

2. The Domain Name and Registrar

The disputed domain name <serepta.works> (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 July 11, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on July 18, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 20, 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 Respondent of the Complaint, and the proceedings commenced on August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 23, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on August 30, 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

Complainant is a global biotechnology company that develops and sells precision genetic medicines and gene therapy products for the treatment of rare diseases.

Complainant owns numerous trademark registration for marks containing the term “Sarepta” throughout the world, including the following trademark registrations relevant to this matter:

- U.S. Trademark Registration No. 4,724,239, registered on April 21, 2015 for SAREPTA;
- U.S. Trademark Registration No. 4,653,264, registered on December 9, 2014 for SAREPTA;
- U.S. Trademark Registration No. 6,342,349, registered on May 4, 2021 for SAREPTA;
- U.S. Trademark Registration No. 4,724,240, registered on April 21, 2015 for SAREPTA THERAPEUTICS; and
- U.S. Trademark Registration No. 4,653,265, registered on December 9, 2014 for SAREPTA THERAPEUTICS.

Collectively, these registered trademark rights in the SAREPTA and SAREPTA THERAPEUTICS trademarks are referred to herein as the “SAREPTA Marks.”

The Domain Name was registered with the Registrar on June 12, 2023. At the time of filing the Complaint, the Domain Name did not resolve to an accessible website but was used to send emails claiming to be from an employee of Complainant.

5. Parties' Contentions

A. Complainant

With respect to the first element of the Policy, in addition to owning registered trademark rights in the SAREPTA Marks, Complainant asserts that it also owns the domain name <sarepta.com> and numerous other domain names containing the SAREPTA name, which it uses to communicate with the public about Complainant and its products, and which it uses for its employees' email addresses, including for communications with vendors, customers, potential employees and others. Complainant alleges that by virtue of the extensive sales and advertising of products and services and its business activities under the SAREPTA Marks in the United States and around the world, the SAREPTA Marks have become and are well known throughout the world. Complainant further alleges that the Domain Name incorporates a misspelling of “Sarepta” with an “e” in place of the first “a” in the mark, which is confusingly similar to the SAREPTA Marks and to Complainant's primary domain name <sarepta.com>. Complainant also points out that Respondent registered the Domain Name in order to trick the public into believing that emails from Respondent were legitimate. Complainant also asserts that the Whois record shows that Respondent registered the Domain Name using Complainant's own address, which clearly indicates that Respondent registered the domain name with knowledge of Complainant and an intent to deceive the public.

With respect to the second element of the Policy, Complainant alleges that it is not affiliated in any way with Respondent and has never authorized Respondent to register or use the Domain Name or the SAREPTA Marks. Complainant also asserts that Respondent is not commonly known by the name “Sarepta,” “SereptaWorks,” or any variation thereof. Complainant further alleges that Respondent cannot demonstrate any rights or legitimate interests in the Domain Name because Respondent is not using the Domain Name in

connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

With respect to the third element of the Policy, Complainant asserts that Respondent's actions amount to typosquatting and that the Domain Name was intentionally chosen in bad faith to mislead public into thinking that it relates to employment opportunities at Complainant with the intent that many persons would not notice the slight misspelling of the SAREPTA in the email addresses Domain Name. As to use, Complainant asserts that a domain name used to impersonate a complainant's employees, provide fake job opportunities and obtain personal information from prospective employees constitutes bad faith use of the Domain Name. Complainant also alleges that Respondent fraudulently used a fake employee's name, as well as Complainant's actual address, to register the Domain Name and that Respondent's provision of manifestly false contact information to the Registrar further demonstrates Respondent's bath faith registration and use of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Although Respondent defaulted, to succeed in this UDRP proceeding, paragraph 4(a) of the Policy requires Complainant to prove its assertions with evidence demonstrating:

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

Because of Respondent's default, and depending on the circumstances of the case, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant has provided evidence that it is the owner of multiple registrations for the SAREPTA Marks.

The Domain Name consists of Complainant's registered SAREPTA trademark with the replacement of the first letter "a" with the letter "e". As discussed in the [WIPO Overview 3.0](#), section 1.9, the consensus view is that "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". Similarly, previous UDRP panels have consistently held that "a mere addition or a minor misspelling of Complainant's trademark does not create a new or different mark in which Respondent has legitimate rights".

Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator, WIPO Case No. [D2008-1302](#) (“Such insignificant modifications to trademarks is commonly referred to as “typosquatting” or “typo-piracy”, as such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser’s location bar.”) Here, the term “serepta” in the Domain Name is phonetically and visually confusingly similar to the SAREPTA Marks.

Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant’s SAREPTA Marks in which Complainant has valid trademark rights. Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant needs only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, then Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant alleged that a false name and address was used as the owner of the Domain Name. Further, Complainant contends that it has never authorized Respondent to use the SAREPTA Marks in any manner and that Respondent is not commonly known by the Domain Name. Furthermore, Complainant asserts that Respondent has not demonstrated any attempt to use the Domain Name in connection with a *bona fide* offering of goods or services, instead, Complainant provided evidence that the Domain Name was used in connection with a fraudulent employment offer scheme. This is sufficient to make a *prima facie* showing for this element of the Policy.

The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

As an initial matter, there is no evidence that Respondent is commonly known by the Domain Name. The Panel notes Complainant established that a false name and contact information was supplied by Respondent in registering the Domain Name. The Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Name which was most likely usurped in furtherance of Respondent’s fraudulent scheme to impersonate Complainant. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) (“the Panel notes that the respondent’s name is “Bestinfo” and that it can therefore not be “commonly known by the Domain Name.”)

The Panel finds that the purpose of registering the Domain Name was to engage in a fraudulent employment offer scheme, which is not a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically 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) can never confer rights or legitimate interests on a respondent.”); see also, *Startup Group v. Whois Agent, Domain Protection Services, Inc. / Dominique*

Geffroy, WIPO Case No. [D2020-3303](#) (finding an employment offer scam to be an example of use of a domain name for the illegitimate purpose of impersonating the complainant in the furtherance of a fraudulent scheme).

Even if the Domain Name was not utilized for a fraudulent scheme, it does not resolve to an active website, and as such, are not being used in connection with a *bona fide* offering of goods or services pursuant to Policy paragraph 4(c)(i). See *Société nationale des télécommunications: Tunisie Telecom v. Ismael Leviste*, WIPO Case No. [D2009-1529](#) (noting that passive holding of a disputed domain name “does not constitute a legitimate use of such a domain name” that would give rise to a legitimate right or interest in the name); *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#) (Respondent had no rights or legitimate interests in the disputed domain name where the disputed domain name resulted to an inactive website); *Philip Morris USA Inc. v. Elijah Etame*, WIPO Case No. [D2016-0968](#) (“the Panel cannot imagine any potentially legitimate interest that Respondent might have in the disputed domain names based on the manner in which the disputed domain names have been used on the inactive websites”). The Panel finds that the registration and holding of the Domain Name is not a *bona fide* offering of goods or services and is not “fair use” of the Domain Name under paragraph 4(c)(i) and (iii) of the Policy.

Based on the foregoing, Complainant has made a *prima facie* showing of Respondent’s lack of any rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent’s default as it considers appropriate.

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Here, the evidence shows that Respondent registered the Domain Name to perpetrate an employment offer scheme. Complainant’s SAREPTA Marks were intentionally chosen when the Domain Name was registered with the intent to impersonate Complainant for the purpose of misleading unsuspecting Internet users into providing sensitive personal and financial information to Respondent. This fact is established by the use of Complainant’s corporate name and an official sounding business title in the signature line of the emails. In light of the evidence demonstrating the fraudulent use of the Domain Name, there could be no other legitimate explanation except that Respondent intentionally registered the Domain Name to cloak its actions and deceive recipients into believing the emails were from Complainant. The Domain Name does not appear to have been registered for any other purpose as the Domain Name does not resolve to an active website. Such activity constitutes a disruption of Complainants’ business and also establishes bad faith registration and use. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (finding bad faith based upon the similarity of the disputed domain name and the complainant’s mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) In addition, registering a domain name with false contact details is commonly held to be bad faith under the Policy. See *Hermes International v. Jack Yong*, WIPO Case No. [D2017-1959](#) (“the fact of a non-existent postal address is difficult to explain”); *TBWA Worldwide, Inc. v. Karim Bendali*, WIPO Case No. [D2019-1932](#) (the postal address revealed by the Registrar was not accurate).

The use of the Domain Name to conduct fraud constitutes a disruption of Complainants’ business and also establishes bad faith registration and use pursuant to paragraph 4(b)(iii) of the Policy. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (Finding bad faith based upon the similarity of the disputed domain name and the complainant’s mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an

email scam.) As discussed above, Respondent used Complainant's corporate name when communicating with third parties with the fraudulent purpose of misleading third parties. Respondent also used Complainant's actual address in the Domain Name's registration contact details. In light of the actions undertaken by Respondent, it is inconceivable that Respondent coincidentally selected the Domain Name without any knowledge of Complainant. See *e.g.*, *Arkema France v. Steve Co., Stave Co Ltd.*, WIPO Case No. [D2017-1632](#).

In finding a disputed domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email communications. See, *e.g.*, *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active web sites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'").

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(iii) of the Policy and has established that Respondent registered and is using the Domain Name in bad faith.

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 <serepta.works> be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: September 13, 2023