

ADMINISTRATIVE PANEL DECISION

Sanofi v. Sanjay Sharma
Case No. D2023-3222

1. The Parties

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

The Respondent is Sanjay Sharma, India.

2. The Domain Name and Registrar

The disputed domain name <ambien10mg.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 August 16, 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 proceeding commenced on August 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent sent an email communication to the Center on August 23, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on September 14, 2023.

On September 25, 2023, the Complainant requested the suspension of the proceeding to explore settlement. The proceeding was suspended until October 25, 2023. The Complainant requested the reinstatement of the proceeding on October 26, 2023. The Center notified the reinstatement of the proceeding to the Parties on the same day.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on November 1, 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

A. Complainant

The Complainant is one of the largest global pharmaceutical company by prescription sales, headquartered in France, operating in more than 100 countries on all five continents, and employing around 100,000 people.

One of the products manufactured and sold for many years by the Complainant worldwide (including in India, where the Respondent is based) is its prescription insomnia treatment drug, marketed and sold under the trade mark AMBIEN (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including international registration No. 605762, with a registration date of August 10, 1993.

B. Respondent

The Respondent is an individual resident in India.

C. The Disputed Domain Name

The disputed domain name was registered on June 17, 2023.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language website offering for sale the Complainant's insomnia treatment drug under the Trade Mark, as well as third party competing products (the "Website").

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.

B. Respondent

The Respondent contends that:

- (i) "Ambien" is a generic term;
- (ii) he was not aware that the term was protected by "copyright" or that the Complainant owned domain names containing the Trade Mark;

- (iii) he has paid for the development of the Website;
- (iv) he doesn't see any fault on his side;
- (v) however, "we are not a big organization like sanofi so I am giving up here so please let us know what next i should do" (sic).

6. Discussion and Findings

6.1 Consent to Transfer

The Respondent has given his consent on the record to the transfer of the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.10.

In light of the content of the Website, and the Respondent's contentions above, the Panel, whilst noting the Respondent's consent, considers it is appropriate to issue a decision on the merits in this proceeding.

6.2 Substantive Elements of the Policy

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 Trade Mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a Trade Mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, 10mg – a direct reference to one of the recommended dosages for the Complainant's AMBIEN insomnia treatment drug) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark 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 such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds 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.

In light of the manner of the Respondent's use of the disputed domain name, the Panel finds that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy. The disputed domain name has clearly been registered and used in order to target the Complainant and its Trade Mark.

The Website offers for sale both the Complainant's AMBIEN insomnia treatment drug under the Trade Mark (but on an "over the counter" and not a prescription basis), as well as competing insomnia treatment drugs manufactured by the Complainant's competitors.

In all the circumstances, including the composition of the disputed domain name and the content of the Website, the Panel considers it is inconceivable that the Respondent was not aware of the Complainant and of its rights in the Trade Mark at the time of registration of the disputed domain name.

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 <ambien10mg.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: November 15, 2023