

ADMINISTRATIVE PANEL DECISION

Allergy Partners, P.L.L.C. v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-3487

1. The Parties

The Complainant is Allergy Partners, P.L.L.C., United States of America (the “US”), represented by Nelson Mullins Riley & Scarborough, L.L.P., US.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <allergypartnersy.com> 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 August 17, 2023. On August 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 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 August 21, 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 August 23, 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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2023. The Center appointed Taras Kyslyy as the sole panelist in this matter on October 2, 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 single-specialty practice in allergy, asthma, and immunology, with a current network of 175 providers in 133 office locations spanning across 20 states of the US. The Complainant adopted its ALLERGY PARTNERS trademark at least as early as 1994 and since then has substantially, exclusively, and continuously, used it to identify itself and the source of the Complainant's services throughout the US.

The Complainant owns two registrations for its trademark ALLERGY PARTNERS in the US, namely the US registrations Nos. 4955397 and 4955395, both registered on May 10, 2016.

The Complainant owns and uses the domain name <allergypartners.com>.

The disputed domain name was registered on April 18, 2023 and was used to resolve to a landing page featuring pay-per-click advertisements competing with the Complainant and the page containing a "Buy this domain" link which redirected visitors to a sedo.com page listing the disputed domain name for sale for a minimum off of USD 999, then it used to dynamically redirect visitors to other various domain names. At the time of the decision in the present case, the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name incorporates the entirety of the Complainant's trademark and consists of the intentional misspelling of the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent registered the disputed domain name in order to intentionally confuse and mislead consumers into believing that it is associated with the Complainant and therefore allowing the Respondent to trade off the goodwill associated with the Complainant's trademark, by creating initial interest confusion, all for the Respondent's own financial gain. The Complainant has not authorized the Respondent to use the Complainant's trademark. The Respondent is not a licensee of the Complainant's trademark.

The disputed domain name was registered and is being used in bad faith. The Complainant's trademark has been in use since at least as early as 1994 which is at least twenty-nine (29) years prior to the Respondent's registration of the disputed domain name; the Complainant's trademark is well-known; the Respondent has no relationship with the Complainant or its trademark nor does the Respondent have authorization to use the Complainant's trademark; the disputed domain name is comprised of a misspelling of the Complainant's trademark; and the Respondent is using the disputed domain name to redirect visitors to various third-party domains, some of which may be attempting to install malicious malware or collect sensitive personal information related to the visitor. On balance, these factors support finding that the Respondent registered and has used/is using the disputed domain name in bad faith.

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel also finds the disputed domain name consists of intentional misspelling of the Complainant's trademark, by the addition of letter "y" after "allergypartners" in the disputed domain name thus it is confusingly similar to the Complainant's trademark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

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.

The available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests. [WIPO Overview 3.0](#), section 2.3.

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Panel finds that the use of the disputed domain name to host a parked page comprising pay-per-click links does not represent a *bona fide* offering while such links compete with or capitalize on the reputation and goodwill of the Complainant's mark. [WIPO Overview 3.0](#), section 2.9.

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.

Noting the near instantaneous and global reach of the Internet and search engines, and particularly under the circumstances of the present case where the Complainant's trademark is widely known including in its sector and the disputed domain name hosted competing pay-per-click links, the Respondent cannot credibly claim to have been unaware of the mark (particularly in the case of the Respondent being a domainer), the Panel is prepared to infer that the Respondent knew, or have found that the Respondent should have known, that its registration would be identical or confusingly similar to the Complainant's mark, which is bad faith. [WIPO Overview 3.0](#), section 3.2.2.

The Panel finds that the use of the disputed domain name to host the competing pay-per-click links to generate profit as well as the offering the disputed domain name for sale at a price likely exceeding out-of-pocket costs directly related to the domain disputed name confirms that the disputed domain name was used in bad faith. [WIPO Overview 3.0](#), section 3.1.

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use, lack of explanation of possible good faith use from the Respondent, the use by the Respondent of a privacy service to mask its details in the publicly-available WhoIs, and the Respondent's apparent role as a serial cybersquatter, makes any good faith use of the disputed domain name implausible. See, for example, *Breitling SA v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-2424](#), and *Aldi GmbH & Co. KG and Aldi Stores Limited v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-1468](#). Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

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

Taras Kyslyy

Taras Kyslyy

Sole Panelist

Date: October 12, 2023