

## **ADMINISTRATIVE PANEL DECISION**

Precision Medicine Group, LLC v. Michael Bebee, Top Domain Brokers LLC  
Case No. D2023-3656

### **1. The Parties**

The Complainant is Precision Medicine Group, LLC, United States of America (“United States”), represented by OlenderFeldman LLP, United States .

The Respondent is Michael Bebee, Top Domain Brokers LLC, United States.

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

The disputed domain name <apocell.com> is registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 2, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 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 September 11, 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 September 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on October 4, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on October 12, 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.

On October 26, 2023, the Panel issued Procedural Order, No. 1, which stated as follows:

“In the Complaint, the Complainant argues: “Precision owns the common law trademark, APOCELL which was registered with the US Patent and Trademark Office (the “USPTO”) (Registration No. 3733978) (the “APOCELL Mark”). A copy of the APOCELL Mark Registration Certificate, which was issued on January 5, 2010, is attached as Annex 4. The APOCELL Mark registration was cancelled on August 7, 2020”.

Pursuant to paragraphs 12 and 10 of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), the Panel invites the Complainant to submit a supplemental filing providing comments/evidence regarding:

1. The circumstances around the abandonment of the APOCELL trademark;
2. The extent of continued and current use in the commerce of the APOCELL trademark.”

The Complainant provided its response on October 31, 2023. The Respondent did not provide any comments thereto.

#### **4. Factual Background**

The Complainant is an American company operating in the field of medical technology. The materials in the record indicate that, in 2018, the Complainant acquired an entity called Apocell, Inc., which operated under the APOCELL mark. Apocell, Inc. specialized in the identification and analysis of biomarkers and had developed a specific method for conducting liquid biopsies that it promoted under the APOSTREAM mark. The record reflects that, through acquisition and assignment, the Complainant became the proprietor of the APOCELL and APOSTREAM marks.

Through its predecessor in interest, the Complainant asserts common law rights in the mark APOCELL, which was registered in the United States on January 5, 2010 (Registration No. 3733978). This registration was cancelled on August 7, 2020. The Complainant has provided evidence that the mark continues to be used in commerce at the date of the filing of the Complaint.

The Complainant is the proprietor of several registrations for the mark PRECISION FOR MEDICINE, including United States Trademark Registration No. 5052305, registered on October 4, 2016 for services in classes 35 and 45, claiming a date of first use of April 2, 2013. It is also the proprietor of several registrations for its APOSTREAM mark, including United States Trademark Registration No. 4418993, registered on October 15, 2013, for goods in class 10, claiming a date of first use of June 1, 2011.

The disputed domain name was registered by the Complainant on January 16, 2001. Thereafter it was used to promote the Complainant’s business. On February 24, 2023, the registration lapsed. Shortly thereafter, the disputed domain name was registered by the Respondent.

The disputed domain name currently resolves to a website featuring content about the Complainant’s business and reflecting the Complainant’s APOCELL, PRECISION FOR MEDICINE and APOSTREAM marks and logos. The home page features the text: “APOCELL HAS JOINED PRECISION FOR MEDICINE. Together, Precision and ApoCell provide a unique and comprehensive suite of specialty services and translational sciences solutions ,from data management and biomarker analytics capabilities to liquid biopsies and tissue profiling.”

## 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.

Notably, the Complainant contends that it has common-law rights in the APOCELL mark, which is identical to the disputed domain name. The website to which the disputed domain name resolves contains copyrighted material belonging to the Complainant and references its products and services, including the use of its APOCELL, APOSTREAM and PRECISION FOR MEDICINE marks. The Respondent is not authorized to use the Complainant's marks and is not utilizing the disputed domain name for a legitimate purpose or use other than to divert consumers or tarnish the Complainant's marks, to trade on the good will of the intellectual property owned by the Complainant, or as an effort at cybersquatting. The Complainant used the disputed domain name to promote its marks and services until February 23, 2023, when the registration inadvertently lapsed.

### B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to 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 Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### 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 established unregistered trademark or service mark rights in the APOCELL mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The Panel notes that the Complainant is relying on a previously registered United States trademark registration reflected in the disputed domain name and on federal trademark applications for marks visible in the website to which it resolves. Since expired trademarks do not by themselves establish trademark rights within the meaning of UDRP paragraph 4(a)(i), as a threshold matter, the Panel must decide whether the Complainant has standing to bring a UDRP action based on unregistered trademark rights.

Based on the evidence presented, the Panel finds that the Complainant has established its unregistered rights in the APOCELL mark. It has provided evidence that its mark has, through use, become a distinctive identifier, which consumers associate with the Complainant's goods and services. The mark does not consist solely of descriptive terms. The Panel finds that the Complainant has provided evidence of use of this mark in e-commerce websites. The period of validity for the APOCELL trademark registration was from 2010 to 2020, and the Complainant has provided evidence that the mark continues to be used in commerce since the date of the particular trademark registration certificate expiration, including on its website. Considered as a whole, and noting in particular the appearance of the mark on the Respondent's website, such use supports the Complainant's assertion of acquired distinctiveness of an unregistered mark. See, for example, *UITGERVERIJ CRUX v. W. FREDERIC ISLER*, WIPO Case No. [D2000-0575](#). See also WIPO Overview of WIPO Panel Views on selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3.

Consistent with prior UDRP panel practice, the Panel finds that the Respondent has deliberately targeted the Complainant's mark by publishing material directly related to the Complainant and its business and reflecting the Complainant's APOCELL, PRECISION FOR MEDICINE and APOSTREAM marks. This fact supports a finding that the Complainant's APOCELL mark has achieved significance as a source identifier for purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

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

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.

Notably, the Respondent, which has not been authorized by the Complainant to use its marks, has used the Complainant's marks in a website to impersonate the Complainant. The website references the Complainant, its marks, and its various products and services. The website reflects no disclaimer of any kind. An Internet user would reasonably assume that the website is controlled by the Complainant, which it is not. Such use does not constitute legitimate fair use and cannot confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.5.3.

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 the present case, the Panel notes that the Complainant's rights in its APOCELL mark predate by more than 20 years the registration of the disputed domain name. Based on the evidence presented, it is apparent that the Respondent had actual knowledge that the disputed domain name was identical to the Complainant's mark. See [WIPO Overview 3.0](#), section 3.2.2. The Respondent's use of the disputed domain name to mislead Internet users by redirecting them to a website that impersonates the Complainant is evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. See [WIPO Overview 3.0](#), section 3.1.4.

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 <apocell.com> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: November 12, 2023