

ADMINISTRATIVE PANEL DECISION

Sarepta Therapeutics, Inc. v. Metodi Darzev, Tool Domains
Case No. D2023-3827

1. The Parties

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

The Respondent is Metodi Darzev, Tool Domains, Bulgaria.

2. The Domain Name and Registrar

The disputed domain name <sarepta.org> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 14, 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 (REDACTED FOR PRIVACY, Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 14, 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 September 18, 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 September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on October 25, 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 global biotechnology company; it owns various trademark registrations containing the mark SAREPTA, *inter alia*:

- U.S. trademark SAREPTA (word), Registration No. 6,342,349, registered May 4, 2021, in international class 5;
- U.S. trademark SAREPTA (word), Registration No. 4,653,264, registered December 9, 2014, in international class 5 and 42;
- U.S. trademark SAREPTA (word), Registration No. 4,724,239, registered April 21, 2015, in international class 1; and
- European Union trademark SAREPTA, Registration No. 011786787, registered September 25, 2013, in international classes 1, 5 and 42 (Annexes 5 and 6 to the Complaint).

The Complainant also uses the domain name <sarepta.com> to address its website for providing information about the Complainant, its products and as email-addresses for its employees.

The disputed domain name was registered on August 16, 2023 (Annex 3 to the Complaint); it resolved to a website which provided pay-per-click links but also to websites which result to security warnings (Annexes 1 and 2 to the Complaint).

On September 14, 2023, the Respondent offered the disputed domain name for sale to the Complainant with the additional information: "Hi, disputes are long and expensive, would you like to buy the domain instead?" (Annex 11 to the Complaint).

Currently, the disputed domain name resolves to a website where the disputed domain name is offered for sale (Panelist's independent research on November 2, 2023).

5. Parties' Contentions

A. Complainant

The Complainant is a global biotechnology company that develops and sells precision genetic medicines and that develops gene therapy products for the treatment of rare diseases. The Complainant owns numerous trademark registrations for the marks SAREPTA and SAREPTA THERAPEUTICS.

It uses its well-known SAREPTA mark in connection with pharmaceutical and biopharmaceutical products, particularly the development and sale of precision genetic medicines and the development of gene therapy products. The Complainant also operates websites at various domain names that contain the SAREPTA marks, such as <sarepta.com>, which it uses to provide information about itself and its products, programs and services, as well as for employee email addresses.

The disputed domain name is identical or confusingly similar to the SAREPTA marks of the Complainant:

The disputed domain name incorporates the exact SAREPTA word mark and merely adds the generic top-level-domain ("gTLD") ".org".

The Respondent has no rights or legitimate interests in the disputed domain name: The Complainant is not affiliated in any way with the Respondent and has never authorized the Respondent to register or use the disputed domain name or the SAREPTA mark; the Respondent is not commonly known by the name SAREPTA or any variation thereof.

Further, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services and can also not claim to be making any legitimate noncommercial use within the meaning of the Policy.

Finally, the disputed domain name was registered and used bad faith: Given the renown of the mark SAREPTA, it is inconceivable that the Respondent might have registered the disputed domain name similar to or incorporating the mark without knowing of it; hence, the Respondent registered the disputed domain name in order to take advantage of the Complainant's reputation and its trademarks which constitutes opportunistic bad faith under the Policy.

In addition, the Respondent has intentionally registered the disputed domain name explicitly for the purpose of engaging in opportunistic cybersquatting; it resolves to a website that contains a number of pay-per-click links, and, at times, also resolves to a web page that results in a Microsoft security warning. At best, the Respondent is passively holding or warehousing the subject domain name which is also within the concept of bad faith use.

Further, the fact that the Respondent used a masking service to mask its identity in this proceeding is a further indication of both bad faith registration and use under the Policy.

The Respondent has been a party to a number of UDRP proceedings in the past, all of which found against it; this long record of confirmed cybersquatting further demonstrates that the Respondent registered and used the subject domain name in bad faith, in violation of the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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 identity/confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark SAREPTA.

The disputed domain name is identical to the Complainant's registered trademark SAREPTA since it entirely contains this mark and only adds the gTLD ".org".

It has long been established under UDRP decisions that gTLDs are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy in the present case.

B. Rights or Legitimate Interests

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 (see section 2.1 of the [WIPO Overview 3.0](#)).

Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety, cannot be considered fair as this carries a high risk of implied an affiliation with the Complainant that does not exist (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated.

Consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the distinctive registered trademark SAREPTA, which is registered and used in many jurisdictions around the world. Moreover, the Complainant registered and is using the domain name <sarepta.com> for addressing its website, which provides information about the Complainant and its products as well as for using the domain name as email-address.

It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant and its rights in the mark SAREPTA which were established long before the registration of the disputed domain name; these facts lead to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark SAREPTA entirely and in an identical way.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant put forward evidence that shows the Respondent has registered the disputed domain name primarily for the purpose of selling it to the Complainant, to disrupt the Complainant's business or intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, especially with respect to the following facts:

- the disputed domain name resolved to a website which provided pay-per-click links which contained the words "Biopharma" and "Biotech" which are closely associated with the Complainant; the links also resolved to websites which resulted in security warnings;
- the Respondent offered the disputed domain name to the Complainant with the additional information: "Hi, disputes are long and expensive, would you like to buy the domain instead?" and has failed to present any evidence of any good faith use with regard to the disputed domain name or reply to the Complaint;
- the Respondent has been a party to a number of UDRP proceedings in the past, which were found against it;
- the disputed domain name incorporates the Complainant's distinctive mark SAREPTA in its entirety, and are thus suited to divert or mislead potential web Internet users from the website they are actually trying to visit (the Complainant's site) and to redirect them to the relevant pay-per-click links from which the Respondent most likely derives commercial revenue. Such conduct would fall squarely within the meaning of paragraph 4(b)(iv) of the Policy; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

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 <sarepta.org> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: November 8, 2023