

## **ADMINISTRATIVE PANEL DECISION**

AMBU A/S v. Chyne Kull

Case No. D2023-4535

### **1. The Parties**

The Complainant is AMBU A/S, United States of America (United States), represented by Faegre Drinker Biddle & Reath, United States.

The Respondent is Chyne Kull, New Zealand.

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

The disputed domain name <ambu-usa.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2023. On November 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 2, 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 November 7, 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 November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on December 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**

The following facts are undisputed.

The Complainant, based in Denmark, and its predecessors in interest have been in the medical device industry for over 85 years. The Complainant was founded in 1937 as “Testa Laboratory”, developing a hemometer device that allowed doctors to measure the amount of hemoglobin in a patient’s blood without having to send it to a laboratory. In 1956, Testa Laboratory brought the revolutionary Ambu ventilation bag to market, introducing the world’s first portable self-inflating resuscitator that operated without a battery or oxygen supply. The Ambu bag remains a fixture in hospitals and emergency response departments today. In 1986, the Complainant changed its name to “Ambu International” and eventually “Ambu A/S”. Today, the Complainant offers a diverse range of medical products including single-use endoscopes, cardiac electrodes, and resuscitators.

The Complainant owns rights in various trademarks containing the word element AMBU, including a United States registration (word mark) AMBU, with registration number 3,554,442, and a registration date of December 30, 2008, for goods in classes 9 and 10.

The Complainant also has an Internet presence, primarily through the website accessed by the domain name <ambu.com> and <ambuusa.com>. The <ambu.com> domain name was first utilized by the Complainant as of April 22, 1996, and has been used since then to advertise and provide information regarding its products. The <ambuusa.com> domain name was created on October 18, 1996, and now serves as the Complainant’s “home page” in the United States.

The disputed domain name was registered August 12, 2023, and does not resolve to an active 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.

Notably, the disputed domain name only differs one hyphen from the domain name that serves as the Complainant’s “home page” in the United States and the Respondent uses the disputed domain name to perpetrate a fraudulent scheme by sending emails from an outgoing email server using the disputed domain name. Specifically, within days of registering the disputed domain name, the Respondent sent emails under the disputed domain name impersonating an Ambu Inc. employee, to the Complainant’s customers to request “customer’s (sic) outstanding receivables” followed with a signature block featuring an AMBU design mark. This fraudulent activity was quickly identified by the Complainant’s employees after a customer reached out about the suspicious activity.

##### **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.

Based on the available record, the Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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

Although the addition of other terms, here USA, 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 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

Panels have held that the use of a domain name for illegal activity, here the sending of fraudulent emails attempting to impersonate the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark.

Panels have held that the use of a domain name for illegal activity, here the sending of fraudulent emails, attempting to impersonate the Complainant constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In addition, the Whois information provided by the Respondent seems to be purposely incorrect, which would confirm a finding of bad faith on the part of the Respondent. The Respondent has provided a false address in Illinois, a state in the United States, that was further specified as being located in the country of New Zealand.

Based on the available record, the Panel finds that the Complainant has established the third element 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, <ambu-usa.com>, be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: December 8, 2023