

ADMINISTRATIVE PANEL DECISION

Exelgyn v. Sanjay Kumar
Case No. D2023-5309

1. The Parties

The Complainant is Exelgyn, France, represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Sanjay Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <buymifegyne.online> (“Disputed Domain Name”) is registered with Dreamscape Networks International Pte Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2023. On December 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 22, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2024. Due to an apparent issue with the notification, on February 8, 2024, the Respondent was granted until February 13, 2024 to indicate whether it would like to participate to this proceeding. The Center did not receive any communication from the Respondent.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on February 16, 2024. 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 French pharmaceutical company established in 1997 specialising in women's reproductive health products. The Complainant is part of a fully-integrated international group of pharmaceutical companies. Among other products, the Complainant offers medical abortion products, including an anti-hormonal product "Mifegyne" (the "Complainant's Product"), in almost 40 countries where abortion is legal, such as Austria, France, Germany, Switzerland and the United Kingdom.

The Complainant is the owner of several trademark registrations for the MIFEGYNE mark (the "Complainant's Trademark") in various jurisdictions, including, inter alia, International Trademark Registration No. 505831 registered on August 19, 1986 in Class 5 designating, inter alia, Colombia, Cuba, Egypt, Singapore, and Switzerland; and European Union ("EU") Trademark Registration No. 015010218 registered on June 30, 2016 in Class 5.

The Complainant's Trademark is fully incorporated in the Complainant's various domain names, such as <mifegyne.fr> created in 2020 and <mifegyne.net> and <mifegyne.shop> both created in 2021.

The Disputed Domain Name was registered on May 5, 2022. At the time of filing of the Complaint and at the time of the decision, the Panel notes that the Disputed Domain Name resolves to a website in German and purports to offer for sale various pharmaceutical products including the Complainant's Product (the "Respondent's Website"). The disclaimer page contains the statement "**Buymifegyne.online** ist der offizielle Partner für die von ihm empfohlenen Produkte. Bei richtiger Anwendung wirkt jedes auf **Buymifegyne.online** aufgeführte Produkt garantiert Wunder", which translates to "**Buymifegyne.online** is the official partner for the products it recommends. When used correctly, every product listed on **Buymifegyne.online** is guaranteed to work wonders".

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 the following:

- (a) The Disputed Domain Name is confusingly similar to the Complainant's Trademark as it incorporates the Complainant's Trademark in its entirety. Combined with the generic term "buy", the Disputed Domain Name does not prevent a finding of confusing similarity with the Complainant's Trademark;
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any license or authorization from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. The Respondent's Website purports to offer the Complainant's Product without prescription, when the use of the Complainant's Product in Germany (and other countries) is subject to specific guidelines and requires a medical prescription. Therefore, the Disputed Domain Name is being used for illegal activity and fraudulently misleads the public into believing that the Respondent's Website is affiliated with the Complainant; and
- (c) The Complainant's well-established, worldwide reputation and the extensive use of the Complainant's Trademark indicate that the Respondent was or should have been aware of the Complainant's Trademark prior to registering the Disputed Domain Name. The Respondent intentionally registered the Disputed Domain Name targeting the rights of the Complainant to attract the Complainant's existing and potential customers and generate financial gain. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 Disputed Domain Name has been registered and is being used by the Respondent 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 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.

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 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 another term here, "buy", may bear on the assessment of the second and third elements, the Panel finds the addition of such generic 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.

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.

The Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

Panels have held that the use of a domain name for illegal activity here, the sale of the Complainant's pharmaceuticals without prescription to European countries including Austria, Germany, the Netherlands and Switzerland contrary to the relevant legislations, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the composition of the Disputed Domain Name, which incorporates the Complainant's Trademark with the generic term "buy", carries a risk of implied affiliation as it effectively impersonates or suggests a connection with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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, it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's prior registered Trademark in its entirety for commercial gain by selling pharmaceutical products including the Complainant's Product without prescription. As discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Panels have held that the use of a domain name for illegal activity, here the sale of the Complainant's pharmaceuticals without prescription to European countries including Austria, Germany, the Netherlands and Switzerland contrary to the relevant legislations, 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.

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 <buymifegyne.online> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: March 1, 2024