

ADMINISTRATIVE PANEL DECISION

Exelgyn v. Agyemang Richard
Case No. D2024-0304

1. The Parties

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

The Respondent is Agyemang Richard, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <mifegyeonline.online> (the “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 January 24, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 25, 2024, 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 February 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 25, 2024. The Respondent did not submit any formal response. On March 5, 2024, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Ian Lowe as the sole panelist in this matter on March 11, 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 pharmaceutical company established in 1997, specializing in reproductive women's health. It is a subsidiary of SEVER Life Sciences B.V. and part of an international group of pharmaceutical companies. The Complainant's medical abortion products are available in nearly 40 countries where abortion is legal, including Australia, France, Germany, the United Kingdom, and the United States. Its medical product, Mifegyne, which provides a non-invasive alternative to surgical procedures and can cause termination of pregnancy, has been sold under the MIFEGYNE mark since 1986.

The Complainant and its affiliates operate a number of consumer-facing websites around the world using domain names comprising "mifegyne" and both generic and country code Top-Level Domains ("gTLDs" and "ccTLDs").

The Complainant is also the proprietor of a number of registered trademarks for MIFEGYNE in various jurisdictions, including France trademark number 1356319 registered on May 26, 1986, and European Union trademark number 015010218 registered on June 30, 2016.

The Domain Name was registered on August 30, 2022. It resolves to a German language website purporting to offer for sale a number of abortion pills including the Complainant's Mifegyne product and similar products of competitors of the Complainant. The "Meet our Team" section of the website displays three photographs of named individuals who are claimed to be health professionals. However, research by the Complainant indicates that the photographs are stock photographs available on the Internet. According to the scam reporting website at "www.stop419scams.com", the Respondent operates a number of malicious websites offering medication for sale and the Respondent's email address has been used to register multiple other domain names that point to websites offering pregnancy termination medication for sale. These websites include a number whose domain names comprise the trademarks of third parties.

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 Domain Name.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is 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 Domain Name; and
- (iii) the 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 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 uncontested rights in the MIFEGYNE trademark (the “Mark”), both by virtue of its trademark registrations and as a result of its widespread use of the Mark over a number of years. Ignoring the generic Top-Level Domain (“gTLD”) “.online”, the Domain Name comprises the entirety of the Complainant’s MIFEGYNE trademark, save for the omitted letter “n”, together with the word “online”. In the view of the Panel, neither the slight misspelling (indicative of “typosquatting”) nor the addition of the word “online”, prevents a finding of confusing similarity between the Domain Name and the Mark. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights and 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. Accordingly, 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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Respondent has not used the Domain Name for a bona fide offering of goods or services, but rather for a website purporting to sell the Complainant’s product, without authorization, and the products of competitors of the Complainant, all at substantially discounted prices. Furthermore, the evidence as to the use of misleading photographs of supposed health professionals and as to the involvement of the Respondent with fraudulent activity and other websites purporting to offer pregnancy termination medication, all support a finding that the Respondent has used the Domain Name, comprising a slight misspelling of the Complainant’s MIFEGYNE mark, to mislead Internet users and divert them to the Respondent’s website.

Panels have held that the use of a domain name for illegal activity, such as indicated in this case the sale of counterfeit goods or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel does have in mind that previous UDRP panels have recognized that resellers using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a bona fide offering of goods and thus have a legitimate interest in such domain name. The Oki Data¹ test as set out in the [WIPO Overview 3.0](#) section 2.8 outlines the following cumulative requirements for such a finding:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site only to sell the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and

¹ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

(iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

So far as the first requirement is concerned, the Respondent’s website offers what purport to be the Complainant’s goods, but without the authorization of the Complainant and at substantially discounted prices, indicating they are either grey market products or counterfeit. So far as the second requirement is concerned, the Respondent’s website also offers for sale what purport to be the products of a competitor. Turning to the third requirement, the Respondent’s website gives no information whatsoever as to the identity of the operator of the website or seller of the products on offer and fails to make clear in an accurate and prominent way, or at all, the Respondent’s relationship (or absence of relationship) with the Complainant. The third requirement is also not therefore met.

Accordingly, the Panel does not consider that the Respondent has met the Oki Data test.

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 light of the nature of the Domain Name, comprising as it does a slight misspelling of the Complainant’s Mark, and the use of the Respondent’s website to sell what purports to be the Complainant’s Mifegyne product, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. The Panel considers that the Respondent has registered and used the Domain Name to deceive Internet users into believing that the Domain Name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the Mark, clearly for commercial gain.

Furthermore, given that the Respondent’s activities have been flagged as fraudulent by a professional anti-fraud website, the Panel considers it likely that the Respondent is using the Domain Name in connection with a fraudulent scheme to obtain payment for goods and services that the Respondent has no real intention of providing. Such behavior is manifestly considered evidence of bad faith; see [WIPO Overview 3.0](#), section 3.4.

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 Domain Name <mifegyneonline.online> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: March 25, 2024