

ADMINISTRATIVE PANEL DECISION

COMPAGNIE GERVAIS DANONE v. Epie Steve

Case No. D2024-0721

1. The Parties

The Complainant is COMPAGNIE GERVAIS DANONE, France, represented by Eversheds Sutherland (France) LLP, France.

The Respondent is Epie Steve, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <bestactivia.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2024. On February 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 16, 2024, 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, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2024, 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 February 22, 2024.

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 February 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 18, 2024.

The Center appointed Michael D. Cover as the sole panelist in this matter on March 27, 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 company incorporated under French law and is a subsidiary of Danone S.A., a global food and beverage group, with three main business areas: Dairy and Plant-based Products, Waters and Specialised Nutrition. Danone is a leading business in these areas, operating in 160 countries, with more than 100,000 employees around the world. ACTIVIA is a major brand of Danone.

The product that is sold under the trademark ACTIVIA in 1987 and the Complainant and Danone S.A., and the Danone local subsidiaries own numerous consisting of the term “activia”, including the domain name <activia.com>, which was registered on October 26, 2003.

The Complainant has a strong online presence by being active on different social media platforms, including Facebook and Instagram.

The Complainant owns a number of trademark registrations consisting of or containing the term “activia” in many jurisdictions throughout the world. These include:

- International Trademark Registration No. 725041, in Classes 29, 30, and 32, registered on October 13, 1999.
- International Trademark Registration No. 1276399 in Classes 29, 30, and 32, registered on July 6, 2015.
- United States of America Trademark Registration No. 2613732, in classes 29, 30, and 32, registered on September 3, 2002.

The Disputed Domain Name was registered on November 12, 2023. The Disputed Domain Name has resolved to an ecommerce website, purporting to offer ACTIVIA products for sale.

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.

Identical or Confusingly Similar

The Complainant submits that the Complainant has established rights in the ACTIVIA trademark and that the Disputed Domain Name is confusingly similar to that trademark. The Complainant also submits that the addition of the merely descriptive word “best” before the Complainant’s ACTIVIA trademark is insufficient to distinguish the Disputed Domain Name from the ACTIVIA trademark. The Complainant submits that the addition of the suffix “.com” is immaterial when determining whether a domain name is confusingly similar to a complainant’s trademark.

The Complainant concludes that the Disputed Domain Name is confusingly similar to the ACTIVIA trademarks of the Complainant, in accordance with Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests

The Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy, in order to demonstrate rights or legitimate interests in the Dispute Domain Name. The Complainant sets out that prior Panels have held that, that in the absence of any licence or permission from a complainant to use a well-known trademark, no actual or contemplated bona fide or legitimate use of a disputed domain name can be claimed by a respondent.

The Complainant states that it is clear that the Respondent's sole purpose was to try to take advantage of the Complainant's well-known ACITIVIA brand in order to attract Internet users to the Disputed Domain Name and thus generate financial gains from unsuspecting Internet users.

The Complainant concludes that it is thus that the Disputed Domain Name was registered without any legitimate interest or right and that it was exclusively registered to seek undue commercial gain from the ACTIVIA trademark to the detriment of the Complainant and the Complainant therefore asserts that the Respondent has no rights or legitimate interests in respect of the Dispute Domain Name, in accordance with paragraph 4(a)(ii) of the Policy.

Registered and used in Bad Faith

The Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith.

The Complainant notes that paragraph 4(b) lists four factors which, in particular but without limitation may be evidence of the registration and use of a domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

The Complainant submits that the Respondent registered the Disputed Domain Name with full knowledge of the Complainant's rights in its ACTIVIA trademark, with only one purpose: profiteering and deceit.

The Complainant submits that the Respondent is using the Disputed Domain Name in bad faith intentionally mislead Internet users by creating a likelihood of confusion with the Complainant's trademarks. In addition, notes the Respondent deliberately chose to conceal its identity by means of a privacy protection service is an additional strong indication of the Respondent's bad faith.

The Complainant concludes that the Disputed Domain Name was registered and is being used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

The Remedy requested by the Complainant

The Complainant requests that the Panel decide that the Disputed Domain Name be transferred to the Complainant,

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; that the Respondent has no rights

or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in its trademark ACTIVIA for the purposes of the first element of the Policy. The entirety of that trademark is reproduced within the Disputed Domain Name and, accordingly, the Disputed Domain Name is confusingly similar to the ACITIVIA trademark, in which the Complainant has rights.

The addition of the element “best” does not prevent a finding of confusingly similarity. Nor does the addition of the generic Top-Level Domain (“gTLD”) “.com” prevent a finding of confusing similarity, as the addition of the gTLD is a technical requirement of registration [WIPO Overview 3.0](#), section 1.11.1.

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.

Further, the Panel notes that the composition of the Disputed Domain Name incorporating the Complainant’s trademark preceded by the term “best” carries a risk of implied affiliation, further reinforced by the impersonating nature of the content at the Disputed Domain Name purporting to offer for sale the Complainant’s products or products that compete with those of the Complainant, without a disclaimer.

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.

It is a reasonable inference that the Respondent knew of the Complainant’s well-known business and company, well-known trademark ACTIVIA and reputation at the time of registration of the Disputed Domain Name, particularly noting that the use of the Disputed Domain Name by the Respondent involves a website that promotes products that compete with those of the Complainant.

Having reviewed the record, the Panel finds that the Respondent’s registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

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 <bestactivia.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: April 7, 2024