

ADMINISTRATIVE PANEL DECISION

Norton (Waterford) Limited v. Brahim Harouni, id pac
Case No. D2024-1164

1. The Parties

Complainant is Norton (Waterford) Limited, Ireland, represented by SILKA AB, Sweden.

Respondent is Brahim Harouni, id pac, France.

2. The Domain Name and Registrar

The disputed domain name is <sudocrema.com> which is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 18, 2024. On March 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 19, 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 those in the Complaint (Redacted for Privacy, Whois Privacy Protection Foundation). The Center sent an email communication to Complainant on March 20, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on March 21, 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 Respondent of the Complaint, and the proceedings commenced on March 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2024. An external email communication was received by the Center on March 26, 2024, to which the Center acknowledged receipt on April 5, 2024. Respondent did not reply to the Complainant's contentions. Accordingly, the Center notified the Commencement of Panel Appointment Process on April 12, 2024.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on April 18, 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

Complainant holds the SUDOCREM brand for an over-the-counter medicated cream which is used for the treatment of sore skin, nappy rash, eczema and acne.

Complainant has rights over the SUDOCREM mark for which it holds, among others, European Union registration No. 000239442, registered on October 2, 2000, in classes 3 and 5. Complainant also has rights over the SUDOCREM and design mark for which it holds United States registration No. 6661832, registered on March 8, 2022, in classes 3 and 5.

The disputed domain name was registered on December 31, 2023. Before the Complaint was filed, the disputed domain name showed, among others, Complainant's SUDOCREM and design mark cited above with the symbol "®", "Histoire Shop Votre Famille Utilisations", "Votre allié solidaire", "We are proud to have provided relief for both parent and baby for over 85 years!", "SHOP NOW", the picture of a recipient with a label showing Complainant's SUDOCREM and design mark cited above with the symbol "®" and "NAPPY CREAM", "Crème pour les couches SUDOCREM® les parents lui font confiance depuis plus de 80 ans", "Sudocrem MAD 50,00", "Sudocrem Pommade MAD 50,00", and afterwards the disputed domain name did not resolve to an active website.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy and requests that the disputed domain name be transferred to Complainant. Complainant's assertions may be summarized as follows.

Complainant is a subsidiary of Teva Pharmaceutical Industries Ltd, a multinational pharmaceutical company. Complainant holds several word and figurative mark registrations covering the term "sudocrem" in a number of jurisdictions around the world, which are used in connection with a medicated cream invented in 1931 and that is available in more than 40 countries. Complainant has a strong online presence under the SUDOCREM mark, with a wide range of country-specific web sites tailored for customers based in different jurisdictions, such as "www.sudocrem.com", "www.sudocrem.co.uk", "www.sudocrem.com.au", "www.sudocrem.com/es/", and "www.sudocrem.com/nl/".

The disputed domain name consists of Complainant's SUDOCREM mark followed by the letter "a". The SUDOCREM mark remains the prominent feature, and is clearly recognisable, in the disputed domain name. The addition of said letter to Complainant's mark does not preclude a finding of confusing similarity.

Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not ever been known as "sudocrem", "sudocrema", or anything similar. Respondent has not registered any marks, nor does Respondent have unregistered mark rights, for "sudocrema" or any similar term. Respondent is not connected or affiliated with Complainant, and has not received license or consent to use the SUDOCREM mark in any way, or to register domain names featuring the SUDOCREM mark or any confusingly similar variant thereof.

The disputed domain name has been used to resolve to a web site which prominently showed the SUDOCREM logo and purported to sell SUDOCREM-branded goods. Said web site adopted the same look and feel (e.g., layout, colours and font) as those of Complainant's official web sites¹ and failed to disclaim its lack of connection with Complainant. Respondent, by prominently and repeatedly brandishing the SUDOCREM logo in conjunction with other visual indicia representative of Complainant, has clearly attempted to impersonate Complainant. Respondent's conduct therefore neither constitutes a bona fide offering of goods or services nor some legitimate noncommercial or fair use of the disputed domain name.

Respondent has both registered and is using the disputed domain name in bad faith.

The SUDOCREM mark is readily identifiable in publicly accessible trademark databases, and previous decisions have acknowledged its widespread recognition. Complainant has a strong online presence under the SUDOCREM mark; when users search for "sudocrema" on Google, the search engine assumes the user intended to type "sudocrem" and presents results pertaining to Complainant's offerings. Thus the simplest degree of due diligence would have otherwise made Respondent aware of Complainant's rights in the SUDOCREM mark. Given the near identity of the disputed domain name to the SUDOCREM mark, Respondent could have only selected the disputed domain name with knowledge of, and the intention to capitalise on, Complainant's mark.

In the web site linked to the disputed domain name, Respondent has attempted to capitalise on the likelihood of Internet-user confusion by repeatedly brandishing Complainant's SUDOCREM mark and logo, by reproducing design elements (e.g., layout, colours and font) similar to those on Complainant's official web sites, and by failing to prominently or sufficiently disclaim the lack of connection to Complainant. That use reflects Respondent's intention to derive commercial gain from confused Internet users who, believing they are interacting with a web site controlled or authorized by Complainant, attempt to purchase said web site's purported offerings.

The disputed domain name no longer resolves to an active web site. However, Respondent cannot plausibly make any good faith use of it given its near identity to Complainant's SUDOCREM mark.

The disputed domain name was configured with MX (mail exchange) records, which is evidence of Respondent's intention to engage in email phishing or other fraudulent activities. Internet users receiving emails from an address linked to the disputed domain name are likely to believe they are receiving correspondence from Complainant, which may result in confused users unknowingly providing Respondent with sensitive information that the latter may use to engage in fraudulent activities. UDRP prior decisions have found that a respondent's activation of MX records, in circumstances where there is a high likelihood of Internet-user confusion, is indicative of an intention to engage in illegitimate conduct.

B. Respondent

Respondent did not reply to Complainant's contentions. On March 26, 2024, an email in the name of I-D PAC was sent to the Center stating: "Does this concern the "sudocrema" domain name? If this is the case we do not use this domain name at all, you must have the wrong company sorry....."

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

¹ Screenshots of Complainant's web sites are attached to the Complaint as Annex 6.

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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 in bad faith.

A. Identical or Confusingly Similar

The Panel finds 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 SUDOCREM mark is reproduced within the disputed domain name, albeit followed by a letter "a". The Panel finds the mark is recognizable within the disputed domain name and that the addition of said letter 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](#), sections 1.7 and 1.8).

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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).

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name. There is no evidence in the case file of any of those, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

The Panel finds that the nature of the disputed domain name carries a risk of implied affiliation as it may mistakenly be seen as suggesting some connection with Complainant's SUDOCREM mark and the products marketed thereunder. The Panel notes that the SUDOCREM products refer to a cream, and that the addition of such letter "a" in the disputed domain name creates the word in Spanish "crema" ("cream" in English) thus referring to the nature of the SUDOCREM products. Further, the evidence in the file shows that Respondent commercially operated the web site linked to the disputed domain name to advertise the sale of allegedly SUDOCREM products generally, having captured the "look and feel" of Complainant's web sites and repeatedly showing Complainant's SUDOCREM and design mark, without showing the identity of the operator thereof, and there appears to be no disclaimer as regards Complainant and its marks and the lack of relationship between Complainant and Respondent, thus misleading Internet users into believing that such web site may be somehow associated with Complainant. All that demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

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.

Having reviewed the case file, the Panel finds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. Taking into consideration that the registration and use of Complainant's marks preceded the creation of the disputed domain name, Complainant's Internet presence and the content of the web site linked to the disputed domain name, the Panel is of the view that Respondent must have been aware of the existence of Complainant's marks and the goods marketed thereunder at the time it registered the disputed domain name. As set forth above, the web site associated with the disputed domain name conveys the false impression that it is somewhat associated with Complainant, and there is no evidence of a disclaimer disassociating such web site from Complainant. Thus, the overall evidence shows that Respondent took advantage of the implied affiliation of the disputed domain name to divert Internet traffic looking for the SUDOCREM products in order to commercially benefit therefrom. By using in such way the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation, or endorsement of Respondent's web site and the products offered therein, which is a showing of bad faith (see paragraph 4(b)(iv) of the Policy).

Finally, the confusing similarity of the disputed domain name with Complainant's SUDOCREM mark, coupled with the fact that the disputed domain name was configured to send emails, makes this Panel consider that the disputed domain name might potentially be used for fraudulent activities.²

Based on the available record, the Panel finds that 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 <sudocrema.com> be transferred to Complainant.

/Gerardo Saavedra/
Gerardo Saavedra
Sole Panelist
Date: May 2, 2024

²See *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-3924](#): "the mere presence of mail servers and SPF records represents a severe risk of phishing or other fraudulent and abusive activities [...] it is rather difficult to imagine that mail server attached to disputed domain name would be used for any good faith purposes". See also [WIPO Overview 3.0](#), section 3.4.