

ADMINISTRATIVE PANEL DECISION

AMIL Assistência Médica Internacional, ESHO Empresa De Servicos Hospitalares S.A. v. Vladimir Ivanov
Case No. D2024-1427

1. The Parties

The Complainants are AMIL Assistência Médica Internacional and ESHO Empresa De Servicos Hospitalares S.A., Brazil, represented by Daniel Advogados, Brazil.

The Respondent is Vladimir Ivanov, Kosovo¹.

2. The Domain Name and Registrar

The disputed domain name <hospitalmonteklinikum.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2024. On April 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 10, 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 April 10, 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 April 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 15, 2024.

¹ The reference to Kosovo should be understood to be in the context of the United Nations Security Council resolution 1244 (1999).

The Center appointed Tobias Malte Müller as the sole panelist in this matter on May 22, 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 Complainants, i.e., Amil Assistência Médica Internacional S.A. and Esho Empresa de Servicos Hospitalares S.A. - hereinafter referred as the Complainant, - operate in the health sector.

The Complainant is the registered owner of many trademarks consisting and or containing the terms MONTE KLINIKUM HOSPITAL, e.g., Brazilian registered trademark no. 823003248, registered on July 18, 2006, for services in class 42. The Complainant also owns the Brazilian registered trademark no. 922285128 for HOSPITAL MONTE KLINIKUM AMERICAS, registered on January 4, 2022.

The Complainant also owns and use the domain name <hospitalmonteklinikum.com.br> (registered on October 08, 2018) for its official website.

The disputed domain name <hospitalmonteklinikum.com> was registered on August 5, 2022, and resolves to pornographic content. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name is listed for sale for USD 1,475.

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 that the disputed domain name is identical or confusingly similar to the Complainant's trademark, since it reproduces the term "hospital monte klinikum".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, there is no evidence that the Respondent uses or prepared to use the disputed domain name or a correspondent name in connection with a bona fide offering of goods or services. In fact, as per the content of the website to which the disputed domain resolves, there is no apparent service being offered, just explicit pornographic content.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, by using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainants' marks and website, possibly creating a sense of sponsorship, affiliation, or endorsement of the Respondent's website or location or maybe just for clicks in its content (pornography) to obtain some economic gain. The disputed domain name seems to be an intended "clickbait" by misleading Internet users to pornography. The domain is for sale but is being used. The owner is trying to obtain undue payment for an illegal activity.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issues – Consolidation of the Complainants

The Complaint was filed by both Amil Assistência Médica Internacional S.A and Esho Empresa De Servicios Hospitalares S.A. In addition, Esho Empresa De Servicios Hospitalares S.A. is the owner of registered trademark for HOSPITAL MONTE KLINIKUM and Amil Assistência Médica Internacional S.A owns the domain name <hospitalmonteklinikum.com.br> which is identical to the disputed domain name but under another Top-Level Domain Name.

As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”): “In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation”.

In the light of the above, the Panel finds that the Complainants have a specific common grievance against the Respondent because they share a common legal interest in HOSPITAL MONTE KLINIKUM, the trademark on which this Complaint is based, since one Complainant owns registrations for the trademark HOSPITAL MONTE KLINIKUM and the other owns a domain name which resolves to an official website. Against this background, the Panel does not see reasons why a consolidated Complaint brought by the Complainants against a single Respondent would not be fair and equitable. Moreover, the Respondent failed to come forward with any allegations or evidence to object the consolidation. For reasons of procedural efficiency, fairness and equity the Panel therefore accepts the joint Complaint.

6.2 Substantive issues

Paragraph 15(a) of the Rules instructs this 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”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (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 in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 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.

Both trademarks of the Complainant, MONTE KLINIKUM HOSPITAL and HOSPITAL MONTE KLINIKUM AMERICAS are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#) at 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.

Moreover, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation, since the disputed domain name is confusingly similar to the Complainant’s trademark MONTE KLINIKUM HOSPITAL and that the trademark MONTE KLINIKUM HOSPITAL is not a combination of terms that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Generally speaking, previous UDRP panels have found that domain names confusingly similar to a complainant’s trademark carry a risk of implied affiliation (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view.

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.

One of these circumstances is that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy).

In the present case, the Panel notes that the Respondent most likely registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third persons, in particular to one of the Complainant’s competitors, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. According to the Complainant’s uncontested allegations, the Respondent has offered the disputed domain name for sale on the domain marketplace DYNADOT. The disputed domain name is listed as being for sale for USD 1,475. This Panel finds that this sum is likely in excess of any out-of-pocket costs directly related to the disputed domain name (see e.g., *Tosara Pharma Limited v. Super Privacy Service LTD c/o Dynadot / zuhal topuz*, WIPO Case No. [D2021-4062](#)).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a

respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

(i) the nature of the disputed domain name (i.e., a domain name confusingly similar to the Complainant's mark);

(ii) the content of any website to which the domain name directs (i.e., pornographic content indicating that the Respondent is capitalizing on the reputation of the MONTE KLINIKUM HOSPITAL mark by creating a likelihood of confusion with the Complainant's mark in order to divert customers to its pornographic website);

(iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name.

(iv) the Respondent's use of a privacy service to conceal its identity.

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 <hospitalmonteklinikum.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: June 5, 2024