

## **ADMINISTRATIVE PANEL DECISION**

Ferring B.V. v. Nancy Drake, Amadeus  
Case No. D2024-1475

### **1. The Parties**

The Complainant is Ferring B.V., Netherlands (Kingdom of the), represented by Jacobacci Avocats, France.

The Respondent is Nancy Drake, Amadeus, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <ferringpharmas.com> is registered with Squarespace Domains II LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 8, 2024. On April 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 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 (Contact Privacy Inc.) 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 amended Complaint on April 15, 2024.

The Center verified that the Complaint together with the amended 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 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2024. The Center received a communication by email on April 19, 2024, from a third party. The Respondent did not submit any response. The Center notified the Commencement of Panel Appointment Process on May 8, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on May 15, 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 part of the Ferring group, which is a biopharmaceutical group, focused on reproductive medicine and women's health, and in specialty areas within gastroenterology and urology. Ferring group was founded 74 years ago and has global presence as follows:

- the group subsidiaries are operating nearly in more than 50 countries;
- the group R&D centres are based in Brazil, China, Denmark, India, Israel, Japan, Russia, Switzerland, the United Kingdom (UK) and the United States of America (USA);
- the group in-house production is carried out in Argentina, China, Czech Republic, Denmark, Germany, India, Israel, Mexico, Switzerland, the UK and the USA;
- the group products are marketed in more than 100 countries.

In 2022, the group made a global turnover of more than EUR 2,2 billion.

The Ferring group's products are sold under the trademarks FERRING / FERRING PHARMACEUTICALS, and the Complainant is the owner of numerous respective trademark registrations in various jurisdictions, including for instance the USA trademark registration No. 3662266 registered on August 4, 2009.

The Complainant also has a strong Internet presence through its large portfolio of domain names using the trademark FERRING (379 domain names).

The disputed domain name was registered on March 4, 2024, and does not resolve to any active website.

On March 11, 2024, the Complainant sent a cease-and-desist letter to the Respondent, no response followed.

#### **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. When assessing the confusing similarity, the generic Top-Level Domain suffix ".com" should be ignored. Removing the suffix of the disputed domain name, the latter is made up of the combination of the Complainant's trademark FERRING, followed by the term "pharmas". Not only the addition of the term "pharmas" is insufficient to eliminate the likelihood of confusion with the Complainant's trademark and the disputed domain name but, on the contrary, it reinforces it insofar as "pharmas" is short for a pharmaceutical company, such as the Complainant. Internet users will be led to believe that the disputed domain name has been registered for the purpose of an official website dedicated to the information on the Complainant and its medicine, and therefore that it would be owned or authorized by the Complainant, or at least associated to the Complainant, which is not the case.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the registration of the disputed domain name by the Respondent and it has not authorized the use of its trademark or any variations thereof, or its name, as part of a domain name by any third party, including the Respondent's. The Complainant's trademark

incorporated in the disputed domain name does not exist as a common word and there is no indication that the Respondent is known by the disputed domain name: the Respondent has therefore registered the domain name in order to unfairly capitalize on the Complainant's trademark. The name of the Respondent does not reflect any right in the disputed domain name. The Respondent is not commonly known by the disputed domain name and has not developed any offering of goods or services through the disputed domain name. The specific structure of the disputed domain name that includes the Complainant's trademark with the term "pharmas" leads to an impersonation of the Complainant or at least suggests an affiliation with the latter and its trademarks. Regardless of the content displayed on the website which the disputed domain name resolves to, it cannot comprise any bona fide offering of goods and services nor legitimate right or interest. The Complainant also contends that the data provided by the Respondent to the registrar is fake or at least inaccurate. The Respondent did not reply to the cease-and-desist letters sent by the Complainant, thus, the latter never denied the lack of any legitimate rights or interests in respect of the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. Given the use and the reputation throughout the world of the Complainant's trademark, the Respondent could not have ignored the existence of the Complainant's prior rights when registering the disputed domain name. A simple Google search on "ferring", which displays almost exclusively results related to the Complainant, should have led the Respondent to renounce to the registration of the disputed domain name if the latter was not ill-intentioned. The registration of the disputed domain name consisting of the Complainant's trademark with the term "pharmas" is not a mere coincidence: the registrant has knowledge of the Complainant's trademark and prior rights. The Respondent intended to target the Complainant (and probably its dedicated internet traffic) and has intentionally chosen to register the disputed domain name. This fraudulent intention as well as the bad faith behavior of the Respondent is supported by the use of a privacy service by the Respondent in order to hide its identity. It is also supported by the lack of any reply from the Respondent following the receipt of a cease-and-desist letter. The Respondent could have responded by explaining the reasons for the registration of the disputed domain name, but the latter chose to remain silent. Any attempt to actively use the disputed domain name would inevitably lead the Internet users to a likelihood of confusion, insofar as they would inevitably be led to believe that the disputed domain name and the related website are owned or associated with the Complainant. Furthermore, email servers are activated for the disputed domain name, therefore, potential emails can be distributed for scam purposes to impersonate the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 (service mark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 other terms here, “pharmas”, may bear on assessment of the second and third elements, the Panel finds the addition of such 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 available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated bona fide or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Respondent has no right or legitimate interests in the disputed domain name resolving to an inactive website (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

Noting the high risk of implied affiliation between the disputed domain name and the confusingly similar widely known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

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, the Panel notes that the Respondent registered the disputed domain name comprising of a widely known Complainant's trademark (specifically distinctive as it does not exist as a common word) followed by "pharmas" standing for the industry of the Complainant, confirms that the Respondent knew, or at least should have known about the existence of the Complainant's prior registered and known trademark, which confirms the bad faith. [WIPO Overview 3.0](#), section 3.2.2.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the mentioned distinctiveness and reputation of the Complainant's trademark, and the mentioned composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of 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 <ferringpharmas.com> be transferred to the Complainant.

*/Taras Kyslyy/*

**Taras Kyslyy**

Sole Panelist

Date: May 27, 2024