

ADMINISTRATIVE PANEL DECISION

Orbus Therapeutics, Inc., v. olubori osunkoya, Orbus Therapeutics, Inc.
Case No. D2024-1617

1. The Parties

Complainant is Orbus Therapeutics, Inc., United States of America (“United States”), represented by Arnall Golden Gregory LLP, United States.

Respondent is olubori osunkoya, Orbus Therapeutics, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <orbustherapeutic.com> (the “Domain Name”) is registered with Metaregistrar BV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 19, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center sent an email to Complainant on April 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant sent an email to the Center on April 19, 2024.

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 Respondent of the Complaint, and the proceedings commenced on April 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 16, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 21, 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 is a biopharmaceutical company that focuses on developing therapeutics for rare diseases. According to Complainant, it has used the word marks ORBUS and ORBUS THERAPEUTICS, as well as a logo, for more than eight years “in connection with its business operations, research, treatment development for rare diseases, and associated clinical trial activities.” According to Complainant’s website, located at the domain name <orbustherapeutics.com>, Complainant “Is dedicated to developing products that treat rare diseases for which there are few, if any, effective therapies.” There is evidence annexed to the Complaint corroborating the allegation that Complainant has used ORBUS and ORBUS THERAPEUTICS as trademarks as early as 2016.

Complainant has three pending trademark applications with the United States Patent and Trademark Office (“USPTO”), one for the word mark ORBUS, one for the word mark ORBUS THERAPEUTICS, and one for its logo. For example, Complainant has filed an application for the word mark ORBUS, USPTO Serial No. 98408409, filed on February 16, 2024, in connection with, among other things, “pharmaceutical preparations for use in oncology and cancer treatment; human therapeutic preparations for use in oncology and cancer treatment.”

The Domain Name was registered on December 16, 2023. The Domain Name has not resolved to an active website. According to Complainant, however:

“Respondent used the domain name to send out email communications to unsuspecting individuals, pretending to be Complainant (the “Phishing Scheme”). The Phishing Scheme involved contacting individuals about a fake job posting at Complainant’s business via email. The email purports to come from an employee in Human Resources at Complainant. The email is sent from ‘[...]@orbustherapeutic.com.’ Notably, the domain is missing the letter ‘s’ at the end of ‘therapeutic,’ but the domain identifies itself as coming from Complainant (Orbus Therapeutics, Inc.). [...]”

“Respondent is using the domain and the Phishing Scheme to obtain personal information from unsuspecting individuals. The job posting identifies Complainant (Orbus Therapeutics, Inc.) as the hiring organization and identifies an actual employee of Complainant as the contact for the job posting.”

Annexed to the Complaint is documentation of the alleged phishing email scheme.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

The Panel finds that Complainant holds rights in the unregistered trademarks ORBUS and ORBUS THERAPEUTICS through use demonstrated in the record, including on Complainant's commercial website. The Panel finds that the Domain Name is confusingly similar to those marks. Notwithstanding the omission of the pluralizing "s" in "therapeutic," this typo does not overcome the fact that Complainant's marks are recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward to dispute Complainant's serious allegations or articulate some bona fide basis for registering the Domain Name.

On the undisputed record, the Panel concludes that Respondent targeted Complainant's mark to impersonate Complainant via a phishing scam aimed at people seeking employment with Complainant. Such a use of the Domain Name clearly is not legitimate and can never confer rights or legitimate interests upon a respondent.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the 6.B section above. The Panel finds, on this undisputed record and on a balance of probabilities, that Respondent had Complainant and its marks in mind when registering the Domain Name. This is clear from the fact that the Domain Name is being used for an email phishing scam to target people seeking employment with Complainant. This use of the Domain Name falls within the above-quoted Policy paragraph 4(b)(iv), and hence constitutes bad faith registration and use of the Domain Name.

Complainant has established Policy paragraph 4(a)(iii).

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 <orbustherapeutic.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 29, 2024