

ADMINISTRATIVE PANEL DECISION

Medaxis AG v. Arash Ansari
Case No. D2024-2027

1. The Parties

The Complainant is Medaxis AG, Switzerland, represented by Taylor Wessing Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Arash Ansari, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <medaxis.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 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 the same day.

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 May 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2024. The Response was filed with the Center on May 22, 2024.

On July 12, 2024, the Complainant filed a request for the admission of a Supplemental Submission.

The Center appointed John Swinson, Anne-Virginie La Spada, and The Hon Neil Brown K.C. as panelists in this matter on July 12, 2024. The Panel finds that it was properly constituted. Each member of 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 Swiss company that was founded in 1994 as Ammann-Technik AG. The Complainant changed its company name to Medaxis AG on October 8, 2002. The Complainant manufactures and sells technical equipment and accessories for medical technology and the provision of related services.

The Complainant is owner of several registered trademarks for MEDAXIS including:

- Swiss trademark P-480203 in class 10, having a registration date on January 12, 2001; and
- International Registration 754938 in class 10 having a registration date of March 6, 2001 and extended to China, France, Germany, Italy, Japan, Spain, United Kingdom and the United States of America.

The Complainant operates a website at “medaxis.ch” and owns other domain names such as “medaxis.fr” that redirect to that website.

The Respondent has an address in Amsterdam and, according to the Response, “engages in the legitimate business of domaining, which involves the acquisition, holding, and selling of domain names.”

The disputed domain name was first registered on July 26, 2003 and has had several owners since that time. The Respondent acquired the disputed domain name via an auction of expired domain names, most likely in 2021.

The disputed domain name redirects to a website titled “BRANDPORTAL” and states “Unleash your business’s full online potential.” This website includes a contact form with the instruction “Complete this form to get a price quote”.

A person using an email address of a business associated with the Complainant ([...]@medela.com) contacted the Respondent via the GoDaddy’s corporate domains division in February 2024 and was informed that the Respondent was “looking for” USD 42,000 for the disputed domain name. In another request by the Complainant via the website at the disputed domain name, the Respondent informed the Complainant that the price was USD 35,000.

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 trademark “Medaxis” is a fanciful term and has no descriptive meaning. The Complainant further asserts that the name “Medaxis” is used exclusively by the Complainant, which is proven by a Google search for the search term “Medaxis”. All relevant results of the Google search lead either to the Complainant’s websites at “www.medaxis.ch” or “www.medaxis.us”, or to websites that present the Complainant’s products for wound therapy.

In summary, the Complainant makes the following submissions:

The Complainant has had trademark protection for MEDAXIS since 2000, which is well before the Respondent acquired the disputed domain name.

The high degree of market recognition of the trademark “Medaxis” alone suggests that the registration of the identical domain name “medaxis.com” is not a coincidence but was acquired in awareness the trademarks of the Complainant.

The use of the disputed domain name by means of domain forwarding and the request to Internet users to provide contact data for the purpose of acquiring the disputed domain name is not a legitimate use. In any case, this type of use does not constitute rights or legitimate interests of the Respondent in respect of the disputed domain name.

The Respondent took over the disputed domain name around the year 2021 with the purpose of selling it to the Complainant and to make a profit. At that time, the Respondent was aware, or at least should have been aware, that the Complainant had a significant interest in the disputed domain name.

The only decisive factor is whether the Respondent acquired the disputed domain name primarily for the purpose of transferring it to the Complainant for valuable consideration. This is to be affirmed in the present case, which is clearly shown by the Respondent’s demanded purchase price of USD 42,000 or USD 35,000.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

In summary, the Respondent makes the following submissions:

Prior to acquisition of the disputed domain name by the Respondent at an auction of expired domain names, the disputed domain name was in use by various entities since its creation in 2003, indicating it is a generic name and not exclusively associated with the Complainant.

The Complainant also asserts a high degree of market recognition of the trademark “Medaxis,” which is not true. The Respondent had never heard of the Complainant before they reached out and enquired to buy the disputed domain name, indicating that “Medaxis” is not a widely recognized name in the market.

There have been several decisions which have held that “domaining” is not per se illegitimate under the Policy. The Respondent acquired the disputed domain name in good faith, recognizing its potential value due to its generic and commercially appealing nature, rather than targeting the Complainant. The disputed domain name was acquired as part of a business strategy focused on generic and keyword-rich domain names. The Respondent has not engaged in practices such as cybersquatting or intentionally targeting the Complainant’s trademark to exploit its goodwill.

The Respondent’s willingness to sell the disputed domain name is a standard business practice in the domain industry and is not inherently indicative of bad faith. The disputed domain name has not been used in any manner that would suggest bad faith, such as hosting infringing content or misleading users.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 onus of proving these elements is on the Complainant.

A. Supplemental Filing

The Complainant filed a supplemental submission. As noted by the Center in acknowledging that filing, neither the Policy nor the Rules include express provision for such a submission. A Panel has the discretion to admit or invite filings under paragraphs 10(a), (b), (d), and 12 of the Rules, including further filings to a party's main submission.

The Panel decides that the Complainant's supplemental submission is admissible, because at the time the Complaint was filed, the Complainant could not anticipate the arguments and additional factual information presented by the Respondent in the Response.

In any event, if the Complainant's supplemental submission was not accepted, the Panel would have reached the same result as set out below.

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

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

C. 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 essence of the Respondent's rebuttal argument is that he is a domainer engaged in the legitimate business practice of acquiring generic domain names for resale, and that he acquired the disputed domain name in an auction of expired domain names without knowledge of the Complainant and recognizing that the disputed domain name was a generic domain name not exclusively associated with the Complainant that had "potential value due to its generic and commercially appealing nature."

The Respondent states: "The term 'MedAxis' can be seen as a combination of 'Med' (a common abbreviation for medical) and 'Axis' (a common English word), which could be used in various non-infringing contexts."

The Panel acknowledges that, as a general rule, a person such as the respondent has the right to acquire a domain name containing a dictionary word or phrase based upon its dictionary meaning and to offer this for sale at a price of its choosing, provided that in so doing it does not target the trademark value of the term. The problem for the Respondent in this case is that the argument that the disputed domain name contains a generic or dictionary term rather than a trademark seems particularly contrived. It requires the Respondent to separate the second level of the disputed domain name into two words, then ascribe a meaning to the first word, then find some kind of dictionary meaning in the two words taken together. For the Panel, these steps are steps too far when the disputed domain name itself has the appearance of being a trademark or coined term rather than having any logical dictionary meaning.

The Respondent presented no evidence that "medaxis" is a term in any dictionary or used in any publications or in the media. The fact that other businesses also use "medaxis" as a trademark or brand does not assist the Respondent's argument on this issue.

Further, the Panel does not consider "medaxis" to be a generic word or term. A generic word should be seen by the community or the relevant trade to mean something on its face. The term "medaxis" seems to mean at best something medical on an axis, which does not mean much at all, except perhaps an axis or group of doctors.

In these circumstances, the value of the term "medaxis" in the disputed domain name appears to the Panel to derive primarily from the trademark and not from any alleged dictionary meaning.

The Respondent has presented no evidence of the auction for expired domain names at which he allegedly acquired the disputed domain name. Furthermore, the Respondent has presented no evidence of any other or how many domain names that he has registered, that he has a practice of only registering domain names that are dictionary terms, or of any other domain names that he has bought or sold. There is no evidence before the Panel to support the Respondent's submission that he "engages in the legitimate business of domaining".

Merely being a domainer does not of itself ensure that the domainer has rights or legitimate interests in every domain name in the domainer's portfolio, which is one of the arguments that the Respondent appears to make. When considering the examples of rights and legitimate interests in the Policy (See paragraph 4(c) of the Policy), the examples require a right or legitimate interest concerning the specific domain name at issue. Accepting that domaining is of itself a legitimate interest to register any domain name would make the second element of the Policy an empty requirement, because it could then be satisfied by merely owning a portfolio of domain names.

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

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant. *Instagram, LLC v. Domains By Proxy, LLC / Masud Rana, D-limit Ltd*, WIPO Case No. [D2022-0250](#).

While the disputed domain name was initially registered in 2003, the Respondent acquired it apparently in 2021. The Complainant presented evidence that the disputed domain name was transferred in 2021 (but also apparently also transferred two more times in 2023). In any event, the Respondent acknowledges that he acquired the disputed domain name at auction and does not dispute the Complainant's submission that the auction was in 2021. Bad faith is to be assessed at the time of the acquisition of the disputed domain name by the Respondent. [WIPO Overview 3.0](#), section 3.9.

In 2021 (and 2023), the Complainant held trademark registrations in many countries, and there is no reason to disbelieve the Complainant's assertion and sample evidence (e.g., evidence of awards) that the Complainant had an Internet presence and reputation in several countries at that time. That said, the mark MEDAXIS is used by the Complainant in relation to relatively niche goods, and the Panel is reluctant to consider that it is generally known to the public. In other words, it is possible that the Respondent was not aware of the Complainant when he acquired the disputed domain name at auction.

In the present case, based on the facts before the Panel, the Panel takes the view that the Respondent had an obligation to take at least some steps to screen the disputed domain name to avoid the registration of a trademark-abusive domain name. This is because:

- The Respondent claims to be a professional domainer.
- The Respondent acquired the disputed domain name at an auction of expired domain names.
- The very construction of the disputed domain name stands out as a warning that there is probably a trademark in the background; it looks and sounds like a fanciful and specifically made-up name or brand.
- It would have been an easy and responsible thing to do to conduct a trademark register search of one of the major trademark registries for an exact match to the key part of disputed domain name, and doing so would have found the Complainant's trademark.
- The Respondent could have looked at the WIPO Global Brand Database and seen several references to MEDAXIS and the Complainant itself. The Respondent certainly knows how to conduct such a search, as Annex 2 in the Response is exactly that search, but made recently, i.e., after the Respondent acquired the disputed domain name. The Respondent says that the search results show the disputed domain name was clean, but the Panel believes that the search results show that if the Respondent had made the search before the auction, the Respondent would have seen that there were trademark owners with relevant trademark rights, including that the Complainant, by name, had a trademark identical to the disputed domain name.
- The Respondent could have undertaken a Google search or YouTube search, and doing so produce a long list of results referring to the Complainant.

The Respondent does not assert that he made any of the above inquiries or did any investigation at all before bidding at auction of the disputed domain name.

The Respondent could have done more to make inquiries but did not do so. The Panel is not suggesting that it is always the case that a domainer should not buy a domain name at auction unless all of these searches give the domainer a green light. We are saying that the Respondent in this case, based upon the very construction of the disputed domain name, should have done more than nothing at all to give him a reasonable assurance that buying the disputed domain name would not be a bad faith registration regarding the Complainant's (or someone else's) trademark rights. In the circumstances, it was reckless for the

Respondent to purchase the disputed domain name as he did, and on the balance of probabilities, it was bad faith.

The Respondent lists several possibilities as to what the disputed domain name might mean, and seeks to rely upon the fact that certain other companies use the term. This does not demonstrate that the term is descriptive, generic, or a dictionary term or well-known phrase, and the Panel does not consider it useful to examine each of the Respondent's various examples in any detail, given that they have the flavor of being reverse-engineered after the Respondent was required to justify his purchase. What is important to the question of registration and use in bad faith in a case of this type is not the range or volume of allegedly good faith possibilities that a respondent may find on a trawl of the Internet after the registration or acquisition, but what was and equally what should have been in the respondent's mind at the point of acquisition.

The Respondent's acquisition of the disputed domain name and immediate offering for sale supports the Panel's conclusion that the Respondent's conduct in this case constitutes registration and use in bad faith within the meaning of the Policy.

The Respondent was or should have been aware of the Complainant's rights when acquiring the disputed domain name, and then immediately offered it for sale. The Complainant's mark is somewhat distinctive. The Respondent has not presented a credible evidence-backed rationale for registering the disputed domain name. Even though the Respondent did not approach the Complainant to sell the disputed domain name, in the circumstances of this case, the Respondent's website offering the disputed domain name for sale is evidence that supports a conclusion of bad faith intention and use. See, for example, *Frankie Shop LLC v. Domain Sales - (Expired domain caught by auction winner) c/o Dynadot*, WIPO Case No. [D2023-2529](#).

In conclusion, given that the term in the disputed domain name has the appearance of a trademark rather than that of a dictionary word or phrase, the Respondent, as a domainer, should have shown a high level of attention and particular diligence when acquiring the disputed domain name from an expired domain names auction. In that regard, the Respondent need have looked no further than a brief trademark search or a Google search for the trademark owner's official website. Indeed, one search or the other would more probably than not have disclosed the Complainant's interest. It seems unlikely to the Panel (although possible) that the Respondent performed no such investigations, but if he did not, then the Panel considers that he should have done so and that his recklessness or willful blindness to the Complainant's rights does not absolve the Respondent from the consequences of the Policy.

E. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The Respondent asks for a finding of Reverse Domain Name Hijacking. In view of the decision, such a finding is inappropriate.

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 <medaxis.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Presiding Panelist

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Panelist

/The Hon Neil Brown K.C./

The Hon Neil Brown K.C.

Panelist

Date: July 24, 2024