

ADMINISTRATIVE PANEL DECISION

Ratiopharm GmbH v. Juergen Hesmer, Hesmer
Case No. D2024-2657

1. The Parties

The Complainant is Ratiopharm GmbH, Germany, represented by SILKA AB, Sweden.

The Respondent is Juergen Hesmer, Hesmer, Germany, represented by Hans-Ulrich Seidel, Germany.

2. The Domain Name and Registrar

The disputed domain name <ratiopharm.asia> is registered with Vautron Rechenzentrum AG (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 28, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on July 8, 2024, providing the registrant and contact information disclosed by the Registrar. The Complainant filed an amendment to the Complaint on July 8, 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 July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. On July 18, 2024, the Respondent sent an email in German requesting an extension to the Response due date. On July 22, 2024, the Center invited the Complainant to comment on the Respondent's request. On July 23, 2024, the Complainant objected to the Respondent's request. On August 2, 2024, the Center granted an extension to the Response due date until August 19, 2024. On August 8, 2024, the Respondent sent an email to the Center requesting a further extension, which was declined by the Center on August 15, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on August 26, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 28, 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 a widely known pharmaceutical manufacturer with its headquartered in Ulm, Germany. It develops and distributes pharmaceuticals in various areas of medicine (Annex 6 to the Complaint).

The Complainant is the owner of the RATIOPHARM trademark in a large number of jurisdictions. Among others, the Complainant is the owner of the German Trademark Registration No. 919895, registered on June 28, 1974, for RATIOPHARM, covering protection of goods as protected in class 5 (Annex 8 to the Complaint).

Since 1997, the Complainant further owns and operates its official website at “www.ratiopharm.com” (Annex 10 to the Complaint).

The Respondent is reportedly located in Germany.

The disputed domain name was registered on April 14, 2008.

According to the case file, the disputed domain name has yet not been actively used and resolves to a general landing page indicating that the disputed domain name is not available.

However, MX email servers have been configured for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 17 to the Complaint).

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.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, in his second email to the Center on August 8, 2024, the legal representative of the Respondent raised the question whether UDRP is applicable to this case and indicated that the disputed domain name is known since 2008 and ever since, no website has been linked to the disputed domain name.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) The disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Starworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

Before discussing the three elements under paragraph 4(a) of the Policy, the Panel notes that the UDRP is applicable to ".asia" Top-Level Domain registrations, like in the present case. By agreeing to the registration agreement for the disputed domain name, the Respondent has agreed to be bound by the terms of the UDRP, included therein. The Panel further notes that the Complaint was filed 16 years after the registration of the disputed domain name. However, UDRP panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. See section 4.17 of the [WIPO Overview 3.0](#).

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 the RATIOPHARM trademark 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 with no additions or amendments. Accordingly, the disputed domain name is identical to the RATIOPHARM 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.

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.

There is particular no indication in the case file that the Respondent is commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish the Respondent's rights or legitimate interests therein.

On the contrary and bearing in mind that the Respondent has configured an MX email server for the disputed domain name, the Panel cannot exclude that the disputed domain name may already have been used or will be used in connection with possibly fraudulent or illegitimate activities by the Respondent.

Furthermore, the Panel considers that the composition of the disputed domain name, being identical to the distinctive RATIOPHARM trademark, carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

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.

In the present case, the Panel notes that the Respondent obviously had the Complainant and its widely known RATIOPHARM trademark in mind when registering the disputed domain name. Noting the composition of the disputed domain name and the Complainant's long-established and internationally use of the RATIOPHARM trademark (including at the date of registration of the disputed domain name by the Respondent, who appears to reside in Germany where the Complainant is primarily located), it is obvious to the Panel that the Respondent has deliberately chosen the disputed domain name to target the Complainant and mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel notes that the disputed domain name has yet no been associated to an active website other than a landing page indicating that the disputed domain name is not available.

Panels have found that the non-use of a domain name (including a general landing page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's RATIOPHARM trademark, the nature of the disputed domain name, which fully consists of the Complainant's RATIONPHARM trademark with no additions or amendments, and the lack of any credible rebuttal by the Respondent despite an 18 day extension to the Response period, 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.

In addition, the Panel believes that the active MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name may be used by the Respondent to mislead Internet users looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, most likely for fraudulent activities.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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 <ratiopharm.asia> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 10, 2024