

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Sam Akuot, Akuot Technologies, Scottie Simon, Domain Administrator, Emhoff Krieg, Anna Hansler, Jeff Zeleny, Whois Privacy Protection Service by onamae.com, Becadin Inc, Domain Admin, Harriet J Dimon, IT Manager, Chris Gmbh, Joyce's Domain, kyle ramsay, Domain Administrator, Chare Hur, Stemcare, Inc.
Case No. D2024-3260

1. The Parties

The Complainant is Novartis AG, Switzerland, represented by Greenberg Traurig, LLP, United States of America ("United States").

The Respondents are Sam Akuot, Akuot Technologies, United States; Scottie Simon, United States; Domain Administrator, India; Emhoff Krieg, United States; Anna Hansler, France; Jeff Zeleny, Whois Privacy Protection Service by onamae.com, Japan; Becadin Inc, Domain Admin, United States; Harriet J Dimon, IT Manager, China; Domain Administrator, United Kingdom; Chris Gmbh, Germany; Joyce's Domain, United States; kyle ramsay, Domain Administrator, United Kingdom; Chare Hur, Stemcare, Inc., United States.

2. The Domain Names and Registrar

The disputed domain names <erlpajo.com>, <havlumio.com>, <hinvayl.com>, <hygcoji.com>, <izqualea.com>, <lumnesilpa.com>, <piabla.com>, <sympaxxo.com>, <vigolypa.com>, <vilumiqa.com>, <vurlipav.com>, <xunovliz.com>, and <zenlumiqa.com> are all registered with Dynadot Inc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 8, 2024. On August 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 10, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY (DT), Super Privacy Service LTD) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 12, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the

Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants, or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all disputed domain names are under common control. The Complainant filed an amended Complaint on August 18, 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 Respondents of the Complaint, and the proceedings commenced on August 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2024. An informal email was received from the Respondent Harriet J Dimon on August 20, 2024, objecting to the consolidation of the proceeding. The Response was filed with the Center by the Respondent Harriet J Dimon on September 10, 2024. A supplemental filing was received from the Complainant on September 11, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 19, 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 one of the largest pharmaceutical companies in the world. Together with its predecessor companies, the Complainant's heritage roots back more than 250 years. The Complainant has more than 380 operating sites around the world, including more than 50 production sites and Research and Development ("R&D") facilities in the United States, Europe, and Asia, and employs over 105,000 people.

The Complainant is the owner of the following trademark registrations (together, the "Complainant's trademarks"):

Trademark	Registration No.	Registration date	Registered for goods/services in International Class	Type of trademark
ERLPAJO	794653	March 14, 2023	5	Swiss national trademark
ERLPAJO	1725634	March 14, 2023	5	International trademark
HAVLUMIO	794649	March 14, 2023	5	Swiss national trademark
HAVLUMIO	1725635	March 14, 2023	5	International trademark
HINVAYL	794652	March 14, 2023	5	Swiss national trademark
HINVAYL	1725279	March 14, 2023	5	International trademark
HYGCOJI	794741	March 15, 2023	5	Swiss national trademark
HYGCOJI	1725632	March 15, 2023	5	International trademark
IZQUALEA	794656	March 14, 2023	5	Swiss national trademark
IZQUALEA	1725633	March 14, 2023	5	International trademark
LUMNESILPA	794750	March 15, 2023	5	Swiss national trademark
LUMNESILPA	1725626	March 15, 2023	5	International trademark
PIABLA	794742	March 15, 2023	5	Swiss national trademark
PIABLA	1725636	March 14, 2023	5	International trademark
SYLPAXXO	794752	March 15, 2023	5	Swiss national trademark
SYLPAXXO	1725277	March 15, 2023	5	International trademark
VIGOLYPA	794745	March 15, 2023	5	Swiss national trademark

VIGOLYPA	1725630	March 15, 2023	5	International trademark
VILUMIQA	794747	March 15, 2023	5	Swiss national trademark
VILUMIQA	1725629	March 15, 2023	5	International trademark
VURLIPAV	794748	March 15, 2023	5	Swiss national trademark
VURLIPAV	1725628	March 15, 2023	5	International trademark
XUNOVLIZ	794751	March 15, 2023	5	Swiss national trademark
XUNOVLIZ	1725625	March 15, 2023	5	International trademark
ZENLUMIQA	794753	March 15, 2023	5	Swiss national trademark
ZENLUMIQA	1725627	March 15, 2023	5	International trademark

The disputed domain names were all registered on March 14, 2023. The details about the registrants of the disputed domain names and the websites to which they resolve are the following:

Disputed domain name	Registrant	Status at the time of filing of the Complaint
<erlpajo.com>	Sam Akuot, Akuot Technologies	inactive
<havlumio.com>	Scottie Simon	inactive
<hinvayl.com>	Domain Administrator	inactive
<hygcoji.com>	Emhoff Krieg	inactive
<izqualea.com>	Anna Hansler	inactive
<lumnesilpa.com>	Jeff Zeleny, Whois Privacy Protection Service by onamae.com	inactive
<piabla.com>	Becadin Inc., Domain Admin	inactive
<sylpaxxo.com>	Harriet J Dimon, IT Manager	inactive
<vigolya.com>	Domain Administrator	inactive
<vilumiqa.com>	Chris Gmbh	inactive
<vurlipav.com>	Joyce's Domain	inactive
<xunovliz.com>	kyle ramsay, Domain Administrator	inactive
<zenlumiqa.com>	Chare Hur, Stemcare, Inc.	inactive

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 names.

The Complainant states that the disputed domain names are confusingly similar to the Complainant's trademarks, because they incorporate these trademarks in full.

According to the Complainant, the Respondents have no rights or legitimate interests in respect of the disputed domain names, because they registered them without the Complainant's authorization or consent. The Complainant maintains that the Respondents are not commonly known by the disputed domain names and have no relevant trademark rights. The Complainant notes that the disputed domain names are inactive and the Respondents are not using them for a bona fide offering of goods or services or carrying out a legitimate noncommercial or fair use of them.

The Complainant contends that the disputed domain names were registered and are being used in bad faith.

It submits that its nascent trademark rights precede the registration of the disputed domain names, and notes that on March 13, 2023, it filed trademark applications for the Complainant's trademarks, all of which are completely arbitrary and have no generic or descriptive meaning in any known language, and information about these trademark applications became available on the same day. The Complainant points out that the following day, the Respondents registered the 13 disputed domain names, each of which is identical to one of the Complainant's trademarks, within a 12-minute period. According to the Complainant, this is not a coincidence, and the Respondents registered the disputed domain names in anticipation of the trademark rights of the Complainant. The Complainant also notes that all trademark applications for the Complainant's trademarks have matured into registration prior to the filing of this Complaint.

The Complainant maintains that, although the disputed domain names are inactive, their passive holding by the Respondents does not preclude a finding of bad faith, since the Respondents may use them in bad faith through email addresses based on the disputed domain names. According to the Complainant, the Respondents are actually the same individual or entity pretending to be 13 different individuals or entities, and have provided false contact information, including invalid or inactive telephone numbers, wrong addresses or other false contact information for at least eight of the thirteen disputed domain names.

B. Respondents

The Respondent Harriet J Dimon, registrant of the disputed domain name <sylpaxxo.com>, filed a Response. In its Response, this Respondent submits that the disputed domain name <sylpaxxo.com> and the Complainant's SYLPAXXO trademark have never been used commercially. It states that it has not engaged in bad faith registration or use of the disputed domain name <sylpaxxo.com>. According to this Respondent, the Complainant has no common law rights in the SYLPAXXO trademark as it has "remained in opposition" and has not been registered in China and the European Union. It maintains that the pending trademark is different from the approved trademark and does not give rise to an exclusive right to use the registered trademark as of the date of filing of the trademark application. The same Respondent adds that the disputed domain name <sylpaxxo.com> was registered before the Complainant registered the SYLPAXXO trademark and started using it in commerce.

None of the other Respondents submitted any Response or other communication in this proceeding.

6. Discussion and Findings

6.1. Procedural issues

A. Consolidation of multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that these registrants are in fact the same entity or mere alter egos of each other, or are under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Complainant points out that all of the disputed domain names were registered using the same Registrar, have the same name servers, and were registered on the same date, March 14, 2023, within approximately 12 minutes of each other, which took place just one day after the Complainant filed its applications for the Complainant's trademarks. The Complainant adds that all of the disputed domain names were registered using the same privacy service, and none of them resolves to an active webpage. The Complainant also notes that all of the disputed domain names consist of one of the Complainant's trademarks in its entirety. According to the Complainant, it is unlikely that 13 unrelated individuals and/or entities across seven countries all decided—almost simultaneously—to use the same registrar (Dynadot) to register domain names that are each identical to arbitrary trademark applications filed by the Complainant one day earlier in

Switzerland. The Complainant maintains that it is far more likely that the Respondents are one and the same individual/entity that registered all of the disputed domain names and attempts to mask its actions by pretending that 13 different individuals and/or entities registered the disputed domain names. The Complainant adds that at least some of the provided registrant information is false. The Complainant further submits that the Complaint against the disputed domain names arises from a common nucleus of facts, and consolidation will promote the shared interests of the Parties in avoiding unnecessary duplication of time, effort and expense, which furthers the fundamental objectives of the Policy.

The Respondent Harriet J Dimon objected to the Complainant's consolidation request, but did not provide any relevant arguments in support of its objection. None of the other disputed domain name registrants commented on the Complainant's consolidation request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the evidence shows that the 13 disputed domain names were indeed all registered on the same day through the same Registrar, and have the same name servers. Each of them is identical to one of the Complainant's trademarks (see the discussion in section 6.2.A below), which were all applied for the previous day. Considering the above, and in the lack of any piece of evidence supporting a different conclusion, the Panel accepts as more likely than not that the Respondents are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

B. Supplemental submission by the Complainant

The Complainant has submitted a supplemental filing.

Paragraph 10 of the UDRP Rules vests a panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition. Paragraph 12 of the UDRP Rules expressly provides that it is for a panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. As discussed in section 4.6 of the [WIPO Overview 3.0](#), unsolicited supplemental filings are generally discouraged, unless specifically requested by a panel.

Here, the Panel has not invited any of the Parties to make any supplemental submissions, and finds that the circumstances of this case do not warrant such invitation. Therefore, the Panel does not admit the Complainant's supplemental filing.

6.2. Substantive issues

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 the Complainant's ERLPAJO, HAVLUMIO, HINVAYL, HYGCOJI, IZQUALEA, LUMNESILPA, PIABLA, SYLPAXXO, VIGOLYPA, VILUMIQA, XUNOVLIZ, ZENLUMIQA, and VURLIPAV trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Respondent submits that the Complainant's trademarks were not registered yet at the time when the disputed domain names were registered. This issue is not relevant to the analysis under the first element and will be discussed further in this decision. For the purposes of the present analysis, it is sufficient that at the time of filing of the Complaint, as well as now, all of the Complainant's trademarks were validly registered.

The Panel finds that each of the ERLPAJO, HAVLUMIO, HINVAYL, HYGCOJI, IZQUALEA, LUMNESILPA, PIABLA, SYLPAXXO, VIGOLYPA, VILUMIQA, XUNOVLIZ, ZENLUMIQA, and VURLIPAV trademarks is recognizable within one the disputed domain names. Accordingly, each of the disputed domain names is identical to one of the Complainant's trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel therefore 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 names. 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 names such as those enumerated in the Policy or otherwise.

The only argument raised by the Respondent is that at the time of registration of the disputed domain names, the Complainant's trademarks were not used and were not registered yet. However, the Respondent does not deny its knowledge of the Complainant and of the Complainant's trademarks, and does not explain why it chose to register the disputed domain names and how it intends to use them. Taking into account the fact that each of the disputed domain names is identical to one of the Complainant's trademarks and that all of them were registered with the same Registrar on the day following the filing by the Complainant of its applications for registration of the Complainant's trademarks, for which filing interested parties may obtain information, it appears as more likely than not that the Respondent did not choose to register the disputed domain names for some reason unrelated to the Complainant's trademarks, but did so targeting these same trademarks in the expectation to obtain some commercial benefit from its control over the disputed domain names. This cannot give rise to rights or legitimate interests of the Respondent in them. It also bears mentioning that all of the Complainant's trademarks have been validly registered either on the date of registration of the disputed domain name or on the following day.

The Panel therefore 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.

The Respondent points out that the Complainant's trademarks had not been registered when the disputed domain name were registered, but were only trademark applications. As discussed in section 3.8 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.

Here, all of the disputed domain names were registered the day after the Complainant filed its trademark applications for the Complainant's trademarks. All of these trademarks represent unusual combinations of letters, and each of the disputed domain names is identical to one of these trademarks. The Respondent does not deny its knowledge of the Complainant's trademarks and has not provided any explanation why it has registered the disputed domain names and how it intends to use them. In the lack of any contrary allegation or evidence, all this supports the conclusion that it is more likely than not that the Respondent had knowledge of the Complainant's trademark applications when it registered the disputed domain names, and registered them targeting these nascent trademarks in an attempt to secure for itself some commercial advantage or gain from the control over the disputed domain names.

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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the degree of distinctiveness of the Complainant's trademarks, the failure of the Respondent to provide any evidence of actual or contemplated good-faith use, the Respondent's concealing its identity or use of false contact details, and the implausibility of any good faith use to which the disputed domain names may be put by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

The Panel therefore 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 names <erlpajo.com>, <havlumio.com>, <hinvayl.com>, <hygcoji.com>, <izqualea.com>, <lumnesilpa.com>, <piabla.com>, <sylpaxxo.com>, <vigolya.com>, <vilumiqa.com>, <vurlipav.com>, <xunovliz.com>, and <zenlumiqa.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 27, 2024