

## **ADMINISTRATIVE PANEL DECISION**

MYLAN INC. v. T.A.

Case No. D2024-3569

### **1. The Parties**

The Complainant is MYLAN INC., United States of America (“United States” or “US”), represented by Viatrix Inc., United States.

The Respondent is T.A., United Kingdom.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 3, 2024. On September 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 4, 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 (DOMAINS BY PROXY) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 6, 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 September 9, 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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 17, 2024. In accordance with paragraph 5 of the Rules, the due date for Response was October 7, 2024. The Respondent sent informal email communications to the Center on September 9 and 17, 2024.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on October 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 paragraph 7 of the Rules.

#### **4. Factual Background**

The Complainant is a member company of Viatrix Inc. (“Viatrix”), a global healthcare company. The Complainant is a global generic and specialty pharmaceuticals company which has become distinguished in various fields of medicine and pharmaceuticals and has acquired controlling interest in a number of top producing active pharmaceutical companies for generic drugs, such as Matrix-Laboratories Limited and Merck KGaA. Founded in 1961, the Complainant has developed and produced medicines for a wide range of medical disciplines, including oncology, anaphylaxis, antiretrovirals, cardiovascular, respiratory, dermatology, immunology, anesthesia, pain management, infectious disease, gastroenterology, diabetology, endocrinology, and women’s healthcare.

The Complainant has registered the VIATRIS mark in the United States as well as many foreign countries, totaling to approximately 705 registrations worldwide connected to its areas of business. In addition, the Complainant continues to globally use the MYLAN mark and has obtained approximately 305 registrations for MYLAN mark throughout the world. The Complainant is the owner of the entire right, title, and interest in and to the VIATRIS marks (US Trademark Registration Nos. 6,149,437 (registered on September 8, 2020), 7,079,834 (registered on June 13, 2023) and 7,429,552 (registered on June 25, 2024), China Trademark Registration No. 41165004 (registered on August 28, 2020), India Trademark Registration No. 4300724 (registered on September 23, 2019), Canada Trademark Registration No. TMA1,111,290 (registered on October 13, 2021), and European Union (“EU”) Trade Mark Registration No. 018151202 (registered on May 22, 2020)) and MYLAN marks (US Trademark Registration No. 3,343,114 (registered on November 27, 2007), China Trademark Registration Nos. 951258 (registered on January 7, 2008) and 21471446 (registered on November 21, 2017), India Trademark Registration Nos. 1540483 (registered on March 15, 2007) and 3397588 (registered on October 26, 2016), Canada Trademark Registration No. TMA846,856 (registered on March 21, 2013), and EU Trade Mark Registration No. 005450721 (registered on September 11, 2009)). The VIATRIS mark has been used since at least as early as 2020, and the MYLAN mark has been in use since at least as early as 1973.

The disputed domain name was registered on August 13, 2024, and resolved to a temporary page which features a “Launching Soon” graphic with a subscribe section for site visitors to enter their email address for site updates and a “Mylan Viatrix” copyright statement, and currently resolves to a parking page provided by the Registrar which presents a list of clickable categories related to “Pharmaceutical Company”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, the Complainant’s contentions may be summarized as follows:

The disputed domain name clearly incorporates Complainant’s registered VIATRIS and MYLAN marks to divert Internet users to an unauthorized website and create a false and misleading association with the Complainant. The Respondent never obtained license or permission from the Complainant to use the trademarks in the disputed domain name. The Respondent has no acquired trademark or service mark

rights as a result of acquiring the disputed domain name and is not using the disputed domain name with a bona fide offering of goods and services. Instead, the Respondent is masquerading as the Complainant with intent for unlawful commercial gain.

The Respondent has actual or constructive knowledge of the actual Viatris company, along with the valuable associated trademarks and service marks as evidenced by their intentional use of both MYLAN and VIATRIS marks. This usage tarnishes the Complainant's marks and associated goodwill, but also it purposely disrupts the Complainant's business and will lead to consumer confusion as to affiliation, all of which further provide evidence of bad faith.

## **B. Respondent**

The Respondent communicated with the Center by email stating that the Respondent has requested the disputed domain name to be cancelled by the Registrar as the Respondent is unable to do it by itself, but did not file a formal response to the Complainant's contentions.

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

### **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. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)).

The disputed domain name consists of the Complainant's MYLAN mark and VIATRIS mark in its entirety plus generic Top-Level Domain ("gTLD") ".com", which is generally viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). A combination of two trademarks can still be considered to be confusingly similar. The public will likely therefore confuse the disputed domain name with the Complainant's trademarks. See *LEGO Juris A/S v. Intrexium Ltd, Lars Andersson*, WIPO Case No. [D2012-0450](#); see also *Société des Produits Nestlé SA v. Stuart Cook*, WIPO Case No. [D2002-0118](#).

Accordingly, the Panel finds that the first element in paragraph 4(a) 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.

As the Complainant asserts, the Respondent has not acquired any trademark or service mark rights in respect of the disputed domain name, and the Respondent never obtained license or permission from the Complainant to use the MYLAN and VIATRIS marks in the disputed domain name. Moreover, there is no evidence to show that the Respondent has been commonly known by the disputed domain name pursuant to

paragraph 4(c)(ii) of the Policy, and the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

According to the Respondent, the Respondent has requested the disputed domain name to be cancelled by the Registrar and thus, the Respondent does not contend that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Although the overall burden of proof in the proceedings is on the complainant, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on the second element in paragraph 4(a) of the Policy 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 in paragraph 4(a) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

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.

Therefore, the Panel finds the second element in paragraph 4(a) of the Policy has been established.

### **C. Registered and Used in Bad Faith**

As the Complainant's MYLAN and VIATRIS marks are widely known worldwide, the Respondent is highly likely to have had actual knowledge of the Complainant's MYLAN and VIATRIS marks when the Respondent registered the disputed domain name.

As illustrated in section 3.3 of the [WIPO Overview 3.0](#), "coming soon" page would not prevent a finding of bad faith under the doctrine of passive holding, and also, as stated in section 3.5 of the [WIPO Overview 3.0](#), a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name with respect to "automatically" generated pay-per-click links.

The fact that the disputed domain name resolved to a temporary page which features a "Launching Soon" graphic with a subscribe section for site visitors to enter their email address for site updates (see *Archer-Daniels-Midland Company v. Elaine Watson*, WIPO Case No. [D2024-3219](#); *L'Oréal v. Loic Tregan*, WIPO Case No. [D2024-3153](#)) and a "Mylan Viatris" copyright statement, and the fact that the disputed domain name currently resolves to a parking page provided by the Registrar which presents a list of clickable categories related to "Pharmaceutical Company" show that the Respondent has used and continues to use the disputed domain name primarily for the purpose of intentionally attempting to mislead Internet users into believing the disputed domain name is associated with the Complainant to trade on the Complainant's extensive goodwill for commercial gain. In addition, the false copyright notice on the website connected to the disputed domain name, "Copyright © 2024 Mylan Viatris", makes clear that the Respondent's intention was to impersonate the Complainant (see *Philip Morris Products S.A. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Kerem Elkoca*, WIPO Case No. [D2021-2717](#)).

Having reviewed the available record, the Panel finds that in the circumstances of this case the Respondent has registered and is using the disputed domain name in bad faith under the Policy.

Consequently, the Panel concludes that the third element in paragraph 4(a) of the Policy has been established.

## 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 <mylanviatris.com> be transferred to the Complainant.

*/Yuji Yamaguchi/*

**Yuji Yamaguchi**

Sole Panelist

Date: November 4, 2024