

ADMINISTRATIVE PANEL DECISION

BIOFARMA v. Yuran

Case No. DCO2024-0066

1. The Parties

The Complainant is BIOFARMA, France, represented by IP Twins, France.

The Respondent is Yuran, China.

2. The Domain Name and Registrar

The disputed domain name <diamicron.co> 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 September 13, 2024. On September 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 20, 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 Respondent of the Complaint, and the proceedings commenced on September 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2024.

The Center appointed Geert Glas as the sole panelist in this matter on October 25, 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, BIOFARMA, is part of the Servier Group, a large independent French pharmaceutical group which is present in over 150 countries worldwide.

One of the pharmaceutical products which it produces and distributes is an antidiabetic agent used to treat type 2 diabetes, and which is put on the market under the DIAMICRON brand. The word “diamicron” is not an existing word which can be found in a dictionary, but a distinctive sign created by the Complainant.

The Complainant owns a large portfolio of trademark registrations for the DIAMICRON mark throughout the world. These trademark registrations include:

- International Trademark No. WO 376146 for the DIAMICRON mark, registered on February 23, 1971, duly renewed and covering products in international class 05. This trademark covers over 30 countries;
- European Union Trademark No. 005673793 for the DIAMICRON mark, registered on November 19, 2007, duly renewed and covering products in international class 05;

It can be said that as a result of its long, widespread and successful use DIAMICRON has become a well-known mark.

The Complainant also owns a number of domain names incorporating the word DIAMICRON, including <diamicron.com> which it registered in 1996.

The disputed domain name was registered on July 23, 2024.

It appears from the evidence provided by the Complainant that the disputed domain name redirects to a page offering the disputed domain name for sale for USD 1,450.

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 disputed domain name is identical to its DIAMICRON trademark.

The Complainant also states that it has no business relationship with the Respondent and that no evidence could be found that the Respondent would be commonly known by the disputed domain name. The Complainant stresses that the word “diamicron” has no meaning and that a worldwide trademark search failed to reveal any DIAMICRON trademarks other than those owned by the Complainant and its affiliates. According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, as evidenced by the fact that it is merely offering the disputed domain name for sale for USD 1,450 which does not qualify as a bona fide offering of goods or services.

The Complainant also contends that the Respondent registered and used the disputed domain name in bad faith as it knew or should have been aware of the widespread use by the Complainant of the term “diamicron”. A simple Internet search would indeed have revealed the extensive use of “diamicron” by the Complainant and its portfolio of DIAMICRON trademark rights. The Complainant submits that the Respondent specifically chose the disputed domain name in the hope and expectation that the Complainant would purchase the disputed domain name which it put up for sale for USD 1,450.

The Respondent also does not use the disputed domain name in connection with a bona fide offering of goods and services. To the contrary, the disputed domain name is merely redirected to a webpage offering the disputed domain name for sale for a sum well above the out-of-pocket registration costs of the disputed domain name, which qualifies as a use in bad faith of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

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

The entirety of the DIAMICRON 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.

Based on the available record, 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 indeed no evidence whatsoever of the Respondent being permitted to use the disputed domain name, of the Respondent using the disputed domain name in the framework of a bona fide offering, of the Respondent being commonly known by the disputed domain name or of the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

To the contrary, it appears that the Respondent has merely used the disputed domain name to redirect to a webpage offering the disputed domain name for sale for USD 1,450 which does not qualify as a use of the disputed domain name (or demonstrable plans for such use) with a bona fide offering nor as a legitimate noncommercial or fair use.

Based on the available record, 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.

It should be noted that panels have consistently found that the mere registration of a domain name which is confusingly similar to a famous or widely-known trademark by a non-affiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

This seems to be the case here, as DIAMICRON had become a widely-known trademark long before the disputed domain name was registered. As a result, the Respondent knew or should have known the Complainant's DIAMICRON mark at the time of registration of the disputed domain name. In addition, the fact that the Respondent's only use of the disputed domain name is to redirect it to a webpage where the disputed domain name is being offered for sale for USD 1,450 further demonstrates that the Respondent was targeting the Complainant and its DIAMICRON mark when registering the disputed domain name.

Reference should thereby be made to one of the bad faith circumstances which are listed in paragraph 4(b) of the Policy namely (i): "circumstances indicating that you have registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark (...), for valuable consideration in excess of your documented out-of-pocket costs directly relating to the domain name".

This circumstance is also present in this case as the Respondent, after having registered the disputed domain name which it knew or should have known infringed on the Complainant's trademark rights, opted to immediately offer it for sale for USD 1,450. This behavior can only be interpreted as being fueled by the expectation that the Complainant would purchase the disputed domain name for valuable consideration.

Moreover, the Respondent opted not to submit a response and by doing so failed to seize an opportunity to bring forward any argument or fact in support of its registration and use of the disputed domain name.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and as a consequence 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 <diamicron.co> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: November 8, 2024