

ADMINISTRATIVE PANEL DECISION

Biofarma v. YUriy Markov
Case No. DPW2023-0001

1. The Parties

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

The Respondent is YUriy Markov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <vastarel-my-world.pw> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 21, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 2023, 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 April 24, 2023, 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 April 24, 2023.

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 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 22, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on June 13, 2023. 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, which is one of the largest French pharmaceutical groups in the world. The group is active in 150 countries and employs more than 21,000 people.

VASTAREL is a medicine developed by the Servier group. It uses Trimetazidine as its active substance and is used as add-on therapy for symptomatic treatment of patients with angina pectoris.

The Complainant owns various trademark registrations for VASTAREL in many jurisdictions, including the following:

- European Union Trademark Registration Number 004367025 VASTAREL, registered on June 2, 2006, in class 5.
- International Trademark Registration Number 597684 VASTAREL, registered on January 29, 1993, in class 5.

The Complainant also owns the domain name <vastarel.com> registered on December 12, 1996.

The disputed domain name <vastarel-my-world.pw> was registered on March 27, 2023, and resolves to a webpage inviting to purchase generic medicines using the Trimetazidine molecule with the Complainant's trademark VASTAREL.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark VASTAREL in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent's use of the disputed domain name to offer third party generic medicines under the Complainant's trademark VASTAREL cannot be considered a *bona fide* offering of goods or services.

The Respondent is not commonly known by the disputed domain name and cannot claim to have been legitimately known under the name Vastarel.

The Respondent has never been granted authorization, license or any right whatsoever to use the trademarks of the Complainant. The Respondent is not commercially linked to the Complainant.

Since the adoption and extensive use by the Complainant of the trademark VASTAREL predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the disputed domain name.

The Respondent knowingly offers for sale a third party generic medicine based on Trimetazidine using the well-known trademark VASTAREL.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's VASTAREL trademark.

The disputed domain name incorporates the Complainant's trademark VASTAREL in its entirety with the addition of a hyphen and the terms "my-world", which do not prevent a finding of confusing similarity between the Complainant's trademark VASTAREL and the disputed domain name. Section 1.8 of the [WIPO Overview 3.0](#) indicates that, where the relevant trademark is recognizable within the disputed domain name, as it clearly is in this case, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The ".pw" Top-Level Domain ("TLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark VASTAREL and that the requirements of paragraph 4(a) of the Policy are fulfilled

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name. Furthermore, the nature of the disputed domain name, comprising the Complainant's trademark VASTAREL in its entirety together with the addition of a hyphen and the terms "my-world", along with its use for a website offering for sale third party medicines and reproducing the Complainant's trademark, cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark VASTAREL mentioned in section 4 above (Factual Background) when it registered the disputed domain name on March 27, 2023. By that time, the Complainant had long ago registered and intensely used the trademark VASTAREL.

By registering the disputed domain name that includes the Complainant's trademark VASTAREL in its entirety the Respondent was targeting the Complainant and its business. The addition of a hyphen and the "my-world" contribute to confuse Internet users and leads them to think that the relevant website belongs to or is endorsed by the Complainant with the intention to capitalize on the fame of the Complainant's trademark for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name and the content of the website to which it resolves, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <vastarel-my-world.pw> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: June 23, 2023