

ADMINISTRATIVE PANEL DECISION

STADA Arzneimittel AG v. alex smith

Case No. D2023-2122

1. The Parties

The Complainant is STADA Arzneimittel AG, Germany, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America ("United States").

The Respondent is alex smith, United States.

2. The Domain Name and Registrar

The disputed domain name <stada.live> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 12, 2023. On May 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 26, 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 amendment to the Complaint on May 30, 2023.

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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 17, 2023.

The Center appointed Halvor Manshaus as the sole panelist in this matter on July 24, 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 is a leading manufacturer of pharmaceuticals and sells products in approximately 120 countries. The Complainant achieved group sales of EUR 3 797.3 million and reported earnings before interests, tax, depreciation and amortization of EUR 884.7 million in the financial year 2022. As of December 31, 2022, the Complainant employs 13 183 people worldwide.

The Complainant is the owner of several trademark for STADA in several jurisdictions, including the following:

- The German trademark registration no. 656,708, STADA registered on April 27, 1954.
- The German trademark registration no. 662,147, STADA registered on September 3, 1954.
- The European Union Trade Mark registration no. 000569194, STADA registered on April 16, 1999.
- The WIPO trademark registration no. 562,225, STADA registered on December 7, 1990.
- The United States trademark registration no. 5,256,442, STADA registered on August 1, 2017.

The Complainant further holds the domain name <stada.com>, registered on December 13, 1999.

The Respondent is an individual based in the United States. The disputed domain name was registered on May 8, 2023, and resolves to a website using the Complainant's logo and offering goods and services related to pharmaceuticals and medical devices.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's STADA trademark as the disputed domain name wholly incorporates the STADA trademark with the addition of the generic Top-Level Domain ("gTLD") ".live" which may be disregarded under the first element.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the STADA trademark in any manner. Further, the Complainant holds that the Respondent has never used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Complainant holds that the Respondent uses the disputed domain name for a website that falsely appears to be a website associated with the Complainant. The Respondent is not commonly known under the disputed domain name and has not acquired any trademarks or service mark rights in the disputed domain name. Lastly, the Complainant argues that the Respondent is making an illegitimate, commercial, unfair use of the disputed domain name, with intent for commercial gain by misleading Internet users.

The Complainant holds that the disputed domain name was registered and is being used in bad faith as the Respondent likely knew of the Complainant's trademark due to its long history and precedence. Further, the Complainant argues that the disputed domain name was registered and used to disrupt the Complainant's relationship with its customers or attempt to attract Internet users for potential commercial benefit based on their confusion. Further, the Complainant holds that the Respondent's website falsely appears to be associated with the Complainant by offering goods and services related to pharmaceuticals and medical devices and using the Complainant's trademarks without permission.

B. Respondent

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

6. Discussion and Findings

The Complainant has, in accordance with paragraph 4(a) of the Policy, requested that the disputed domain name be transferred to the Complainant.

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and have the disputed domain name transferred, the Complainant must establish that the three following elements are satisfied for the disputed domain name:

- (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.

Pursuant to paragraph 15 (a) of the Rules, the Panel shall decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

On the basis of the evidence submitted by the Complainant and, in particular, with regards to the content of the relevant provisions of the Policy (paragraph 4(a), (b), and (c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

Under the first element of paragraph 4 (a) of the Policy, the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant holds several trademark registrations of STADA. The disputed domain name comprises of Complainant's trademark entirely together with the generic gTLD ".live". As the gTLD is not taken into consideration when assessing the similarity between a disputed domain name and a complainant's trademark, the Panel finds that the disputed domain name is identical to the Complainant's trademarks in which the Complainant has rights.

Thus, the Panel concludes that the requirements under paragraph 4(a) of the Policy have been satisfied.

B. Rights or Legitimate Interests

In order for the Complainant to succeed under paragraph 4(a)(ii) of the Policy, the Complainant must establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. If the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the evidentiary burden of production shifts to the Respondent. See section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel notes that the website featured on the disputed domain name uses the Complainant's trademark and that the Respondent offers similar services and goods as the Complainant on the website, thereby creating a false impression that the website is associated with the Complainant.

In the Panel's view, the presented evidence referred to by the Complainant is sufficient to establish *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel has not been presented with, or discovered, any evidence that i) the Respondent has received a license or other permission to use the Complainant's trademark or any domain name incorporating this mark; (ii) the Respondent is commonly known by the disputed domain name; (iii) the Respondent has acquired trademark rights to use the disputed domain name; or (iv) the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Based on the above, the Panel concludes the conditions in paragraph 4(a)(ii) of the Policy have been met.

C. Registered and Used in Bad Faith

For the Complainant to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

The Panel finds it unlikely that the Respondent was unaware of the Complainant's trademark registrations, especially considering that the Complainant's trademark registration predates the disputed domain name's registration by over 69 years.

The website featured on the disputed domain name is clearly intended to attract Internet users for commercial gain as the website offers similar goods and services to the Complainant and uses the Complainant's trademark. Thereby, the Respondent creates a false impression that the website is associated with the Complainant. Taken together with the fact that the Respondent has not filed any Response in these proceedings, the Panel finds that the Complainant has established that the Respondent registered and used the disputed domain name in bad faith.

The Panel therefore concludes that the Complainant has satisfied the requirements of paragraph 4(b) 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 <stada.live> be transferred to the Complainant.

/Halvor Manshaus/

Halvor Manshaus

Sole Panelist

Date: August 7, 2023