

ADMINISTRATIVE PANEL DECISION

Mylan, Inc. v. Kevin Yao, Domain Admin
Case No. D2023-3382

1. The Parties

The Complainant is Mylan, Inc., United States of America (“United States”), represented by The Webb Law Firm, United States.

The Respondent is Kevin Yao, Domain Admin, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2023. On August 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (SUPER PRIVACY SERVICE LTD c/o DYNADOT) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 August 11, 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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 25, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on October 12, 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 member company of Viatris, a global healthcare company. The Complainant is a pharmaceutical company founded in 1961. The Complainant owns the following trademark registrations for VIATRIS and VIATRISCONNECT:

- VIATRIS: United States registration No. 6149437 registered on September 8, 2020.
- VIATRISCONNECT: United States registration No. 6366329 registered on May 25, 2021.

At the time of filing the Complaint, the Complainant had filed applications for the registration of VIATRIS CONNECT MEDICAL, e.g., European Union serial number 018894046, applied for on June 27, 2023. Further, at least one application has matured to registration during the pendency of this administrative proceeding (i.e., Switzerland registration No. 802418 registered on August 28, 2023).

The Respondent registered the disputed domain name on June 28, 2023. The disputed domain name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to trademarks in which the Complainant has rights. The Complainant has rights in the trademarks VIATRIS, VIATRISCONNECT and VIATRIS CONNECT MEDICAL.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods. The disputed domain name is not in use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent has actual or constructive knowledge of the Complainant's trademarks. The disputed domain name has been registered couple of years after the registration of the Complainant's trademarks. There is no activity on the disputed domain name, which indicates that the Respondent is squatting on the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the trademarks VIATRIS and VIATRISCONNECT. The Panel is satisfied that the Complainant has established its ownership of the said trademarks. The disputed domain name incorporates the Complainant's trademarks in their entirety. It is established by prior UDRP panels that when a domain name incorporates a complainant's registered trademark, such incorporation is

sufficient to establish identity or confusing similarity for the purposes of the Policy even if other terms are added as part of the disputed domain name. *E.g., Oki Data Americas, Inc v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“*Oki Data*”). The addition of the term “medical” does not alter the fact that the disputed domain name is confusingly similar to the Complainant’s trademarks.

The gTLD “.com” should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademarks of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not provided evidence of circumstances of the types specified in paragraph 4(c) of the Policy, or of any other circumstances, giving rise to rights or legitimate interests in the disputed domain name.

Moreover, the Panel finds that the disputed domain name carries a risk of implied affiliation. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

At the time of registering the disputed domain name, the Respondent must have been aware of the Complainant’s trademarks for a number of reasons:

- (i) The Complainant’s trademarks had been registered few years before the disputed domain name was created.
- (ii) A simple Google search on VIATRIS reveals the Complainant’s business and its trademark VIATRIS.
- (iii) The disputed domain name contains the term “medical”, which relates to the Complainant’s industry.
- (iv) The disputed domain name was registered only one day after the filing of at least one of the Complainant’s trademark applications for the identical terms, suggesting that the Respondent was aware of and intentionally targeting the Complainant’s nascent trademark rights in VIATRIS CONNECT MEDICAL.

The disputed domain name resolves to an inactive website. Prior UDRP panels have found that passive holding does not prevent a finding of bad faith if the totality of circumstances supports an inference of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Noting the Respondent’s failure to provide any good-faith explanation for his registration and use of the inherently misleading disputed domain name and the absence of a plausible use of the disputed domain name that would be legitimate (*Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#)), the Panel finds that the current passive holding of the disputed domain name does not prevent the Panel’s bad faith finding.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <viatrisconnectmedical.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: October 24, 2023