

ADMINISTRATIVE PANEL DECISION

Sanofi v. Jitendra Kumar Mishra
Case No. D2024-0158

1. The Parties

The Complainant is Sanofi, France, represented by Selarl Marchais & Associés, France.

The Respondent is Jitendra Kumar Mishra, India.

2. The Domain Name and Registrar

The disputed domain name <ambieninfo.org> is registered with Dreamscape Networks International Pte Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2024. On January 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 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, Private Registry Authority) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 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 amendment to the Complaint on January 30, 2024.

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 February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 26, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on March 6, 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 is a multinational pharmaceutical company headquartered in Paris (France) and settled in more than 180 countries on all five continents employing more than 90,000 people. It results from the Complainant's undisputed allegations that it generated consolidated net sales of 43 billion euros in 2022.

Furthermore, the Complainant developed and sells throughout the world a drug with demonstrated utilities for the treatment of insomnia under the trademark AMBIEN.

The trademark AMBIEN is protected for the Complainant as a registered trademark in a multitude of countries worldwide dating back to 1993, including European Union trademark AMBIEN (verbal) no 003991999 registered on November 28, 2005, for products in class 5.

The Respondent registered the disputed domain name on June 18, 2019.

Finally, it results from the Complainant's documented and undisputed contentions that the disputed domain name resolves to an online pharmacy promoting and selling amongst others AMBIEN drugs in 10mg and 5mg. The Panel notes that neither this webpage nor the packaging of the AMBIEN drugs displayed on the website cites the Complainant's house-brand SANOFI or company name as a manufacturer.

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:

(i) the disputed domain name is confusingly similar to its AMBIEN trademark. In particular, the trademark AMBIEN is wholly and identically incorporated in the disputed domain name. The addition of the widespread generic word "info" obviously refers to an info platform selling medicines;

(ii) the Respondent has no rights or legitimate interests in the disputed domain names. In particular, the Respondent has no connection or affiliation with the Complainant and has not received any license or consent to use the Complainant's mark. Furthermore, the disputed domain name leads to a platform where consumers can purchase medications and specifically obtain counterfeit "ambien" drugs which are potentially dangerous;

(iii) the Respondent registered and uses the disputed domain name in bad faith. In its view, the Respondent may generate unjustified revenues and therefore is illegitimately capitalizing on the AMBIEN trademark fame.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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., i.e., European Union trademark AMBIEN no 003991999 registered on November 28, 2005.

The entirety of the mark AMBIEN is reproduced within the disputed domain name, the only difference between the disputed domain name and the Complainant’s trademark being the addition of the additional term “info” at the end of the disputed domain name. Therefore, the Panel concludes that the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

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.

The Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, it results from the Complainant's undisputed allegations that the disputed domain name resolves to an online pharmacy promoting and selling amongst others AMBIEN drugs in 10mg and 5mg. The Panel notes that neither this webpage nor the packaging of the AMBIEN drugs displayed on the website cites the Complainant's house-brand SANOFI or company name as a manufacturer. The Complainant deduces therefrom that the AMBIEN drugs, sold over the web shop to which the disputed domain name resolves, are actually counterfeit and, hence, potentially dangerous products. The Panel assesses this use as being clearly commercial, so that it cannot be considered a legitimate, noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

Finally, such use cannot be qualified a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel joins the view of previous panels holding that a registrant has no legitimate interest in a domain name that is similar to a pharmaceutical manufacturer's mark and that is being used to direct consumers to an online pharmacy (e.g., see [WIPO Overview 3.0](#) section 2.5.1 and *F. Hoffmann-La Roche AG v. Jatin Jani, Expired Domains LLC*, WIPO Case No. [D2019-0344](#)).

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith, [WIPO Overview 3.0](#), section 3.2.1. In the present case, the Panel holds that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to an online pharmacy promoting and selling amongst others AMBIEN drugs while neither this webpage nor the packaging of those drugs displayed on the website cites the Complainant's house-brand SANOFI or company name as a manufacturer. The Complainant deduces therefrom that the AMBIEN drugs, sold over the web shop to which the disputed domain name resolves, are actually counterfeit and, hence, potentially dangerous products. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's marks. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. Registration of the disputed domain names which contains a third party's mark, in awareness of said mark and in the absence of rights or legitimate interests amounts to registration in bad faith (see *F. Hoffmann-La Roche AG v. Jatin Jani, Expired Domains LLC*, WIPO Case No. [D2019-0344](#) with further references).

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark AMBIEN is fully incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, said mark existed and had been used for more than 25 years;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the absence of any disclaimer on the website, and the impersonating nature of the website design; and
- (iv) the fact that the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier service's inability to deliver the Center's Written Notice.

The Panel finds 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 <ambieninfo.org> be cancelled.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: March 20, 2024