

ADMINISTRATIVE PANEL DECISION

Allergy Partners, P.L.L.C. v. Myron Moorehead
Case No. D2022-0499

1. The Parties

The Complainant is Allergy Partners, P.L.L.C., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Myron Moorehead, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 13, 2022. On February 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2022, 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 February 18, 2022.

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 February 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2022. The Respondent sent three emails to the Center on February 21, 2022 and February 27, 2022. After the Panel was appointed, on March 30, 2022, the Complainant directed an email to the Panel (via a message to the Center, copying the Respondent) urging the Panel not to consider the Respondent’s informal response email messages to the Complaint. The

Respondent communicated in the same fashion later that day, providing continued argument against the Complainant's claims.

The Center appointed Evan D. Brown as the sole panelist in this matter on March 30, 2022. 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 healthcare service provider, asserting that it operates the largest single-specialty practice in allergy, asthma, and immunology in the United States, with a current network of 173 providers, having over 125 office locations in 20 states (including the Respondent's home state of Georgia). It has used the mark ALLERGY PARTNERS since 1994 and enjoys the benefit of United States trademark registrations for that word mark, Registration No. 4,955,397, and a stylized version of the mark with design, Registration No. 4,955,395, both registered on May 10, 2016.

The disputed domain name was registered on December 2, 2021 and has been used to display a GoDaddy parking page that serves sponsored advertisements, including advertisements to allergy doctors other than those employed by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Though the Respondent did not file a formal Response to the Complaint, he sent three different email messages (one to the Center on February 21, 2022, and two versions of the same message on February 27, using different email addresses (one using an email with an "allergytomorrow" domain name), directly to counsel for the Complainant, copying the Registrar). In exercising its discretion, to help ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case (see Rule 10(b)), the Panel will consider the Respondent's email messages.

The Respondent's assertions can be summarized as follows:

- The Respondent had never heard of the Complainant before this dispute.
- In addition to owning the disputed domain name, the Respondent owns at least two businesses: MDAllergy Partners, LLC and www.AllergyTomorrow.com.¹
- The Respondent never provided a copy of the landing pages found at the disputed domain name, and never set up a website or any landing pages.
- Counsel for the Complainant is acting in bad faith and has filed a frivolous Complaint that lacks merit. The Complainant is being a bully and counsel for the Complainant are "corporate attorney thugs" trying to stop the "little guy" from going into business.

¹ The Panel visited www.AllergyTomorrow.com and sees that the company purports to be a "turnkey solution to providing an effective allergy based diagnosis and treatment service to your practice... providing tools to a physician to assist in effectively diagnosing and long-term treating allergy sufferers." A panel "may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.8.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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 finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the ALLERGY PARTNERS mark by providing evidence of its trademark registrations. The disputed domain name incorporates the ALLERGY PARTNERS mark in its entirety. This is sufficient for showing confusing similarity under the Policy.

The disputed domain name incorporates the ALLERGY PARTNERS mark in its entirety with the letters “md”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s ALLERGY PARTNERS mark. See [WIPO Overview 3.0](#), section 1.8. The ALLERGY PARTNERS mark remains recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Complainant has established this first UDRP element.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant).

On this point, the Complainant asserts, among other things, that it has not authorized the Respondent to use the ALLERGY PARTNERS mark in the disputed domain name, and that the Respondent has not been commonly known by the Complainant’s ALLERGY PARTNERS mark. Additionally, the Complainant asserts that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services, but has sought to “capitalize on the goodwill and notoriety associated with the ALLERGY PARTNERS mark.”

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. The Respondent’s assertion that it had never heard of the Complainant is undermined by the fact that the Respondent is in the business of providing allergy based diagnosis and treatment services, apparently to physician practices (through his business at [www.AllergyTomorrow.com](#)) which is the very same area of practice the well-known Complainant is active in. The Respondent’s general assertions of the Complainant’s bad faith, and the *ad hominem* attacks against the Complainant’s counsel, do not weigh against the Complainant’s *prima facie* showing. The Panel moreover notes that while the Respondent claims to own MDAllergy Partners LLC and “[www.MDALLERGYPARTNERS.com](#)” the Respondent appears to in fact do business via “[www.AllergyTomorrow.com](#)” such that the disputed domain name seems to be designed to give the ability to draw traffic to the Respondent’s competing business (even if currently merely used for pay-per-click links)

based on the recognized reputation of the Complainant – overall this calls into question the motivations behind the purported MDAllergy Partners LLC business and certainly the “www.MDALLERGYPARTNERS.com” domain name. And nothing in the record otherwise tilts the balance in the Respondent's favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location”.

Because the Complainant's ALLERGY PARTNERS mark is well-known, having been in use for more than 25 years before the registration of the disputed domain name, and associated with the nation's largest single-specialty practice in allergy, asthma, and immunology (the very market in which the Respondent claims and indeed seems to do business), it is implausible that the Respondent was not aware of that mark when it registered the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name, *i.e.*, the Panel finds that the Respondent registered the disputed domain name due to its significance as a trademark owned by the Complainant.

Bad faith use is shown from the Respondent's using the disputed domain name to display paid advertisements. The Respondent – who acknowledges to active in the same area as the Complainant, in effect, a competitor – seems to argue that he did not direct the Registrar to implement the parked page that displays the advertisements. But that does not absolve the Respondent of responsibility. Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests). [WIPO Overview 3.0](#), section 3.5; see also *SAP SE v. Domains by Proxy, LLC / Kamal Karmakar*, WIPO Case No. [D2016-2497](#).

For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

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 <mdallergypartners.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: April 14, 2022