

## **ADMINISTRATIVE PANEL DECISION**

Sanofi v. Protection of Private Person / Jitendra Kumar Mishra  
Case No. D2022-0959

### **1. The Parties**

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

The Respondent is Protection of Private Person, Russian Federation / Jitendra Kumar Mishra, India.

### **2. The Domain Name and Registrar**

The disputed domain name <buyambienpills.com> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 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 March 28, 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 amendment to the Complaint in English on March 31, 2022.

The Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Russian. On March 28, 2022, the Center sent an email communication in both English and Russian to the Parties regarding the language of the proceeding. On March 31, 2022, the Complainant submitted a request that the language of the proceeding shall be English. The Respondent did not comment on the language of the proceeding.

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 in both English and Russian of the Complaint, and the proceedings commenced on April 5, 2022. In accordance

with the Rules, paragraph 5, the due date for Response was April 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 26, 2022.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on May 5, 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 multinational pharmaceutical company based in Paris, France. The Complainant owns trademark registrations for the mark AMBIEN in: French trademark AMBIEN No. 93456039 registered on February 19, 1993, in class 5; European Union trademark AMBIEN No. 003991999 filed on August 17, 2004 and registered on November 28, 2005, in class 5; and International trademark AMBIEN No. 605762 registered on August 10, 1993, in class 5, designating various jurisdictions.

The Complainant sells a drug for the treatment of insomnia under the trademark AMBIEN around the world.

The Complainant also owns and operates a number of domain names including <ambien.com> registered on April 12, 2000.

The disputed domain name was registered on December 10, 2021. It resolves to a website purportedly offering for sale the Complainant's products as well as other pharmaceutical products by containing hyperlinks redirecting Internet users to various websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts that the disputed domain name reproduces its "AMBIEN" trademarks and domain names in their entirety. These marks do not have any particular meaning and are therefore highly distinctive. Further, the Complainant says that the AMBIEN mark is the central and dominant part of the disputed domain name, resulting in confusing similarity regardless of the addition of the words "buy" and "pills". The combination of terms merely suggests that the Complainant's pills are available for a very low price from the website to which the disputed domain name resolves. The word "pills" describes the nature of the product thus further reinforcing confusing similarity. The Complainant also stresses that the AMBIEN brand of sleeping aids benefits from very substantial recognition and goodwill, in particular in the United States.

According to the Complainant, the Respondent has no prior rights or legitimate interests in the disputed domain name as the Respondent's name does not bear any resemblance to Ambien, which is a distinctive and inherently meaningless term. The Respondent also used a privacy protection service to keep his true identity secret in the first instance.

The Complainant also says that it has no relationship whatsoever with the Respondent who has clearly modified the Complainant's trademarks and domain names for its own use and incorporated them into the disputed domain name without the Complainant's authorization.

The Complainant contends that the disputed domain name was registered for the sole purpose of misleading consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by or affiliated with the Complainant, or that the Respondent's activities are approved or endorsed by the Complainant.

In fact, the disputed domain name leads to a blog dealing with Ambien drugs and containing articles and “Buy Ambien” links. By clicking on these hypertext links, an Internet user is redirected to websites, where pharmaceutical products can be purchased at a discount. The disputed domain name thus connects to websites that offer goods that compete with those of the Complainant. None of this amounts to a *bona fide* offering of goods or services.

The Complainant contends that the AMBIEN trademark is well known and the Complainant registered and used it many years before the Respondent registered the disputed domain name. The Respondent thus had both constructive and actual knowledge of the Complainant’s mark and chose nevertheless to exploit it and the goodwill attached to it. This demonstrates opportunistic bad faith on the part of the Respondent. The Complainant points out that in cases in which the well-known status of a complainant’s trademarks is well established, numerous UDRP panel decisions acknowledge that this is in and of itself indicative of bad faith registration and use. The Respondent must have been aware that deception and confusion would arise from its registration and use of the disputed domain name.

Further, the Complainant says that as the disputed domain name directs Internet users to a website, which is not the official website of the Complainant’s products, it is evident that the Respondent has registered the disputed domain name primarily for the purpose of trying to gain an unfair benefit from the Complainant’s goodwill and reputation.

Finally, the Complainant contends that the Respondent has registered and used the disputed domain name for the purpose of disrupting the Complainant’s business, by displaying commercial links which redirect Internet users to a competing websites selling pharmaceutical goods, which constitutes further evidence of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Language of the Proceeding**

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that the language of the proceeding be English for the following main reasons: (a) the disputed domain name contains the English term “pills” (instead of the corresponding Cyrillic terms “таблетки”); (b) the disputed domain name is registered in Latin characters rather than Cyrillic script; and (c) were the Complainant to submit all documents in Russian, the proceeding would be unduly delayed and the Complainant would have to incur substantial expenses for translation.

According to the evidence provided by the Complainant, the disputed domain name resolves to a website in English. The Center has notified of the Respondent in both English and Russian regarding the language of the proceeding and the Complaint, the Respondent has chosen not to submit a response or any objections to the Complainant’s request that the proceeding shall be held in English.

Considering the above, the Panel is satisfied that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient. Therefore, in exercise of its powers under paragraph 11(a) of the Rules, the Panel decides that the language of this administrative proceeding shall be English.

## **B. Identical or Confusingly Similar**

The disputed domain name is not identical to the AMBIEN registered trademark of the Complainant. However, the distinctive AMBIEN mark is clearly recognizable within the disputed domain name. The addition of the terms “buy” and “pills” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the AMBIEN trademark of the Complainant.

## **C. Rights or Legitimate Interests**

The Respondent has not replied to any of the contentions of the Complainant. Nothing on the record suggests that the Respondent is known by the term “Ambien” or by the disputed domain name or has any right or legitimate interest in it. The disputed domain name resolves to a site purportedly offering for sale the Complainant’s products as well as other pharmaceutical products by displaying hyperlinks redirecting Internet users to various websites. The Complainant has not authorized the use of its AMBIEN trademark by the Respondent in any shape or form. The AMBIEN mark is highly distinctive and it is apparent from the composition of the disputed domain name that the Respondent understands the nature of the goodwill attaching to it, which the Respondent intended to turn to his advantage in a manner that is not legitimate and does not reflect any rights the Respondent has or could have.

Therefore, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

## **D. Registered and Used in Bad Faith**

The AMBIEN trademark of the Complainant is distinctive and had acquired a substantial reputation before the date of registration of the disputed domain name. The composition of the disputed domain name illustrates clearly that the Respondent was perfectly aware of that fact and the use the Complainant makes of the trademark in relation to pharmaceutical products (pills). The conclusion is inevitable that the disputed domain name was registered in bad faith, and with the intention of using it to mislead and confuse Internet users. This is because it falsely suggests a legitimate connection with the Complainant, a false suggestion on which the Respondent intended to capitalize by establishing the site to which the disputed domain name resolves. That site displays hyperlinks that can take Internet users to other pharmaceutical products. None of this activity has the approval of the Complainant. It reflects a bad faith attempt to ride on the coattails of the Complainant and benefit financially from a false suggestion of a legitimate connection with the latter.

Therefore, the Panel holds that the disputed domain name was registered and is being used in bad faith.

## **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 <buyambienpills.com> be transferred to the Complainant.

*/William A. Van Caenegem/*

**William A. Van Caenegem**

Sole Panelist

Date: May 19, 2022