

ADMINISTRATIVE PANEL DECISION

F. Hoffmann-La Roche AG v. Whois Privacy Protection Foundation / Beglov Alexey

Case No. D2022-1408

1. The Parties

The Complainant is F. Hoffmann-La Roche AG, Switzerland, internally represented.

The Respondent is Whois Privacy Protection Foundation, Netherlands / Beglov Alexey, Belarus.

2. The Domain Name and Registrar

The disputed domain name <accutane.online> (the “Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 22, 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 on April 26, 2022.

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 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on June 21, 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, together with its affiliated companies, a large multi-national research-focused healthcare group operating in the field of pharmaceuticals, having global operations in more than 100 countries.

The Complainant has, for some time, manufactured and sold a prescription drug for the treatment of severe acne under its ACCUTANE, ROACCUTAN and ROACCUTANE trade marks. Amongst others, the Complainant owns International Registration No. 840371 ACCUTANE in class 5, which was registered on December 6, 2004, and which designates, importantly for this matter and amongst others, Belarus (the Respondent's country). The Complainant's ACCUTANE mark has been recognised as well-known in numerous other UDRP decisions.

The Domain Name was registered on October 16, 2021. The Complainant submitted evidence that the Domain Name has redirected to an online pharmacy ostensibly selling the Complainant's ACCUTANE products together with other drugs that compete with the Complainant. As at the drafting of this Decision, the Domain Name resolved to a website entitled "Buy Accutane Pills Online: Secured Order Processing", with content purportedly providing medical information about the Complainant's ACCUTANE product.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to its ACCUTANE mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used for an online pharmacy offering the Complainant's and competing products for sale, without the Complainant's consent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name is plainly identical to the Complainant's registered and well-known ACCUTANE mark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its ACCUTANE mark was registered and well-known for many years prior to registration of the Domain Name. The Domain Name is identical to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The Respondent's use of the Domain Name for an online pharmacy ostensibly selling the Complainant's ACCUTANCE products as well as other competing products does not qualify as a *bona fide* offering of goods or services conferring rights or legitimate interests. Firstly, it does not meet the requirements of the well-known Oki Data test given that the site did not accurately and prominently disclose the Respondent's relationship with the Complainant, nor did it sell only the trade marked goods (*Oki data Americans, Inc. v. ASD, Inc*, WIPO Case No. [D2001-0903](#); and WIPO Overview of WIPO Panel Views on Selected UDRP

Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 2.8). Secondly, generally speaking, UDRP panels have found that domain names identical to a complainant’s trade mark carry a high risk of implied affiliation ([WIPO Overview 3.0](#) at section 2.5.1). Thirdly, a respondent’s use of a complainant’s mark to redirect users to a competing site would not support a claim to rights or legitimate interests ([WIPO Overview 3.0](#) at section 2.5.3).

The ostensible informational site to which the Domain Name subsequently resolved at the time of drafting of this Decision was clearly intended to lure Internet users to a site at which they can purchase the Complainant’s ACCUTANE products and/or competing products, evidenced by the title incorporating “Buy Accutane Pills Online”, despite the site’s purported informational content. This exploits the impression created by the Domain Name of some connection with the Complainant for the commercial benefit of the Respondent. It also does not meet the requirement of the Oki Data test that the site accurately and prominently disclose the Respondent’s relationship with the Complainant. Such “bait and switch” tactics are not considered *bona fide* for the purpose of conferring rights or legitimate interests (*Merck KGaA v. Moniker Privacy Services and APS Water Services Corp*, WIPO Case No. [D2012-1622](#)).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

Panels have consistently found that the mere registration of a domain name that is identical to a well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

The Complainant’s mark was well-known long prior to registration of the Domain Name, is highly specific and seemingly invented. The Respondent subsequently used the Domain Name, which is identical to the trade mark, for a purported informational site referencing the Complainant’s ACCUTANE product. Thus, it is quite likely that the Respondent had the Complainant’s mark in mind upon registration of the Domain Name.

The Respondent’s use of the Domain Name identical to the Complainant’s well-known mark to redirect users to a site that purportedly sells the Complainant’s as well as competing products, for the Respondent’s commercial gain, is a clear indicator of bad faith ([WIPO Overview 3.0](#) at section 3.1.4). This falls squarely within paragraph 4(b)(iv) of the Policy.

The Panel draws adverse inferences from the Respondent’s failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3), the use of a privacy proxy service ([WIPO Overview 3.0](#) at section 3.6).

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 Domain Name, <accutane.online>, be transferred to the Complainant.

/Jeremy Speres/
Jeremy Speres
Sole Panelist
Date: July 4, 2022