

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Domain Admin, Whois Privacy Corp. / Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2022-1418

1. The Parties

Complainant is Novartis AG, Switzerland, represented by Dreyfus & associés, France.

Respondent is Domain Admin, Whois Privacy Corp., Bahamas / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <kisqalihcp.com> (the “Disputed Domain Name”) is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 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 Complainant on April 27, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint also on April 28, 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 Respondent of the Complaint, and the proceedings commenced on April 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 23, 2022.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on May 27, 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

Complainant is a global healthcare and drug manufacturing company based in Switzerland. Complainant has developed a drug called KISQALI for the treatment of advanced or metastatic breast cancer as well as a treatment for other drug-resistant cancers. KISQALI has been approved for use in more than 75 countries around the world, including the United States of America and European Union.

Complainant owns numerous KISQALI trademark registrations around the world in particular:

- European Union trademark KISQALI No. 013290093 dated September 23, 2014, and covering goods in class 5;
- International trademark "KISQALI" No. 1226294, dated October 2, 2014, covering goods in class 5.

Complainant operates a website at <kisqali.com>, which was registered on December 16, 2013.

The Disputed Domain Name was registered on May 4, 2021.

5. Parties' Contentions

A. Complainant

Complainant became aware of Respondent's registration of the Disputed Domain Name, which reproduces entirely Complainant's trademark KISQALI associated with the term "hcp" (*i.e.* abbreviation for Health Care Professionals), which does not prevent any likelihood of confusion but actually increases the risk of confusion, as Internet users may think the Disputed Domain Name is endorsed by Complainant or that it will direct them to an official website promoting its products.

The Disputed Domain Name randomly redirected users towards fraudulent pages, including a parking page and the pages triggering security alerts. Additionally, the Disputed Domain Name was configured with an email server which increases the risk of phishing activities.

Complainant sent a blocking notification to the Registrar on September 14, 2021, asserting its trademark rights and requesting them to put the Disputed Domain Name on status ClientHold and deactivate it. Complainant kept receiving replies from the Registrar stating they did not find any phishing/malware content in the Disputed Domain Name and that any cancellation of services should be done in accordance to the outcome of a UDRP decision.

Complainant proceeded with sending a deactivation request of the redirection of the Disputed Domain Name to the hosting company. Despite sending several reminders, Complainant has not received any response from the latter to its request.

The Disputed Domain Name reproduces Complainant's trademark KISQALI in its entirety. The structure of the Disputed Domain Name enhances the false impression that the Disputed Domain Name is somehow officially related to Complainant by adding the term "hcp" which is a well-known abbreviation for health care professionals.

Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark.

Respondent cannot claim prior rights or legitimate interests in the Disputed Domain Name as the KISQALI trademark precedes the registration of the Disputed Domain Name for years. Respondent is neither known by the name “KISQALI” nor in any way affiliated with Complainant, nor authorized or licensed to use KISQALI trademark, or to seek registration of any domain name incorporating the aforementioned trademark.

Respondent has never been given the authorization from Complainant for developing websites that will lead Internet users into wrongly believing they are endorsed by Complainant. Such circumstances, and the diversion of Internet traffic to fraudulent websites in order to generate revenue, do not represent a use in connection with a *bona fide* offering of goods and services.

By using the Disputed Domain Name to redirect Internet users to fraudulent websites, Respondent cannot assert that it has made or is currently making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain by misleading consumers.

Given Complainant’s goodwill and renown worldwide, and the nature of the Disputed Domain Name which is virtually identical to Complainant’s trademark, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the Disputed Domain Name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant’s rights. Respondent used the Disputed Domain Name to direct Internet users and generate more traffic to fraudulent websites.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has demonstrated it owns registered trademark rights in the KISQALI trademark globally. The addition of the term “hcp” does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8.

Accordingly, the Disputed Domain Name is confusingly similar to a mark in which Complainant has rights.

B. Rights or Legitimate Interests

Complainant has presented a *prima facie* case that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that Respondent obtained the Disputed Domain Name years after Complainant had begun using its fanciful KISQALI mark indicates Respondent sought to piggyback on the mark for illegitimate reasons, namely to receive pay-per-click revenue from users clicking through to third party sites. Further, the presence of MX records indicates to the Panel that Respondent does not have a legitimate interest in the Disputed Domain Name.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name.

In the absence of any evidence rebutting Complainant’s *prima facie* case indicating Respondent’s lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that Complainant has

satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name was registered many years after Complainant first registered and used its fanciful KISQALI trademark. The evidence on the record provided by Complainant with respect to the extent of use and global fame of its fanciful KISQALI trademark, combined with the absence of any evidence provided by Respondent to the contrary, is sufficient to satisfy the Panel that, at the time the Disputed Domain Name was registered, Respondent undoubtedly knew of Complainant's fanciful KISQALI trademark, and knew that it had no rights or legitimate interests in the Disputed Domain Name.

There is *prima facie* no reason for Respondent to have registered the Disputed Domain Name containing the entirety of the fanciful KISQALI trademark with the common abbreviation "hcp".

Further, the use of the Disputed Domain Name by Respondent is clearly in bad faith. Paragraph 4(b)(iv) of the Policy states that evidence of bad faith may include a respondent's use of a disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the respondent's website or location. Complainant has submitted evidence that Respondent has used the Disputed Domain Name to randomly redirect Internet users towards fraudulent pages, including a parking page and the pages triggering security alerts. Given the nature of Complainant's KISQALI product is to assist in the treatment of breast cancer registering and using a domain name which is confusingly similar to Complainant's "www.kisqali.com" website in order to place a virus on the computer of an individual who is researching life-saving treatment is particularly reprehensible. Further, the Disputed Domain Name has been configured for email servers, which may indicate the Disputed Domain Name could be used for possible phishing attempts or some other illegitimate use. This is a terrible example of bad faith use on the part of Respondent and the Panel does not understand why either the Registrar or the Host Provider did not take steps to disable the website when informed of what was happening by Complainant.

In the absence of any evidence or explanation from Respondent, the Panel finds that the only plausible basis for registering and using the Disputed Domain Name has been for illegitimate and bad faith purposes.

Accordingly, the Panel finds that 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, <kisqalihcp.com>, be transferred to Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: June 10, 2022