

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. DEE Quality
Case No. D2022-2228

1. The Parties

The Complainant is Laboratoires Thea, France, represented by AARPI Scan Avocats, France.

The Respondent is DEE Quality, United States of America.

2. The Domain Name and Registrar

The disputed domain name <thealab.org> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 24, 2022. On June 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 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 June 29, 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 June 30, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on July 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

The Complainant is a French company known under the names Thea and Laboratories Thea. It is a leading European company in the field of ophthalmological pharmaceuticals, used in the field of eye-care. Its products are available in more than 70 countries worldwide.

The Complainant is the proprietor of the trademark THEA, registered *inter alia* in France under no. 3268573 with priority from January 20, 2004; and *inter alia* United States of America Registration no. 6243189 for THÉA, registered on January 12, 2021.

The disputed domain name was registered on June 19, 2022, and resolves to a parking page containing pay-per-click (“PPC”) links to goods and services offered by third parties.

5. Parties’ Contentions

A. Complainant

The disputed domain name includes the Complainant’s trademark in its entirety. The addition of the word “lab” refers to the Complainant’s goods and services and is insufficient to overcome the confusing similarity between the Complainant’s trademark and the disputed domain name.

The Respondent is not known under the name “thea lab” and the Complainant has not authorized the Respondent to use its trademark in the disputed domain name. The Respondent is in no way related to the Complainant.

It is highly likely that the Respondent knew of the Complainant’s trademark when registering the disputed domain name. The Complainant’s trademarks have been used since 1994, many years before the disputed domain name was registered.

The disputed domain name resolves to a parking page featuring sponsored advertising links. Previous panels have found that such parking pages do not represent the *bona fide* offering of goods and services where such links compete with or capitalize on the reputation of the Complainant’s trademark.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark as it includes the Complainant’s trademark in an easily recognizable form combined with the word “lab”, relating to the Complainant’s activities. This does not prevent a finding of confusing similarity between the Complainant’s trademark and the disputed domain name.

This means that the disputed domain name is confusingly similar to the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, “[a]pplying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. See section 2.9 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted 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.”

Considering that the Complainant has been using and registering its trademark years before the disputed domain name was registered, the Respondent must have been aware of the Complainant and its trademark when registering the disputed domain name. Moreover, Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name has been found to be confusingly similar to the Complainant’s trademark THEA, and the disputed domain name resolves to a PPC website offering links to websites of competitors of the Complainant. Using a PPC website containing links to third parties’ websites generate revenue for the Respondent or another party when Internet users click the links.

It is therefore evident that the Respondent has registered the disputed domain name to intentionally attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, affiliation, or endorsement of the Respondent’s website.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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, <thealab.org>, be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: August 10, 2022