

ADMINISTRATIVE PANEL DECISION

Reworld Media Factory v. Domain Admin, Whois Privacy Corp. / Fabrice Loustre

Case No. D2022-3089

1. The Parties

The Complainant is Reworld Media Factory, France, represented by Novagraaf France, France.

The Respondent is Domain Admin, Whois Privacy Corp., Bahamas / Fabrice Loustre, France.

2. The Domain Name and Registrar

The disputed domain name <homeophyto.com> (the “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 August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 23, 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 August 25, 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 August 30, 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 August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 21, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on September 26, 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 headquartered media group.

The Complainant is the owner of the following trade marks which predate the registration of the Domain Name:

French Trade Mark HOMEOPHYTO, registration No. 4209339, filed and registered on September 14, 2015, and assigned to the Complainant on March 31, 2022;

French Trade Mark HOMEOPHYTO, registration No. 4752283, filed and registered on April 7, 2021, and assigned to the Complainant on April 4, 2022.

The Complainant is also the registrant of a number of domain names reflecting its HOMEOPHYTO trade mark including <homeophyto.fr> registered in 2000, and <homeophyto.eu> registered in 2006.

The Complainant announced publicly in June 2021, “the acquisition of “homeophyto.com”, a leading website in the world of homeopathy, phytotherapy and complementary medicine (Annex 8). However, the Panel notes that the Domain Name appears to have been let to expire (by the previous registrant or the Complainant), and the Domain Name was newly registered again on December 26, 2021 (Annex 2). At some point in time the Domain Name resolved to a copy of the Complainant’s previous website. The Domain Name currently points to a website with the title “Magazine Santé” on the home page and with content mainly relating to health and wellbeing, thus in competition with the Complainant, with advertising including via pop-up windows.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to the Complainant’s HOMEOPHYTO trade marks as at the second level the Domain Name reproduces the Complainant’s entire HOMEOPHYTO trade mark, and the generic Top-Level Domain (“gTLD”) “.com” should be disregarded for the purposes of assessing confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant contends that it has not granted any license or permission to the Respondent to use its HOMEOPHYTO trade marks to register any domain name incorporating this term in its entirety. In addition, the Complainant states that it has no relationship with the Respondent. Finally, the Complainant points to the fact that it carried a trade mark search for “homeophyto” with the name of the Respondent and it did not obtain any result.

In terms of the Respondent’s bad faith, the Complainant points to the fact that the Domain Name used to point to a website that was identical to the website content previously available at the Domain Name when it was owned by its legitimate owner from whom the Complainant acquired the Domain Name in 2021. The Complainant also explains that it has sent a cease and desist letter to the Respondent and that shortly thereafter, the website content associated with the Domain Name changed. The Complainant did not receive a response to its cease and desist letter. From these circumstances, the Complainant concludes that the Respondent could not have been unaware of the existence of the Complainant’s trade mark given its

renown and that it registered the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in HOMEOPHYTO, and HOMEO-PHYTO, which is reproduced in its entirety in the Domain Name without the hyphen ("-").

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade marks HOMEOPHYTO and HOMEO-PHYTO in which the Complainant has rights.

At the second level, the Domain Name only consists of the term "homeophyto". The only difference between the trade mark HOMEO-PHYTO of the Complainant and the term "homeophyto" is the absence of the hyphen between "homeo" and "phyto". The Panel finds that this minor difference does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name. The Domain Name is identical to the Complainant's trade mark HOMEOPHYTO.

Then there is the addition of the gTLD ".com". As is generally accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is identical or confusingly similar to the trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the

domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

There is no indication that the Respondent has any rights in respect of the term "homeophyto" and the Complainant has produced evidence of a trade mark search carried out using the name of the Respondent, which did not generate any search results.

In addition, the Complainant declared that the Respondent had not been granted any authorization to use the Complainant's HOMEO(-)PHYTO trade marks in the Domain Name.

The Respondent chose not to rebut the Complainant's *prima facie* showing despite being put on notice by the Complainant through an initial cease and desist letter dated April 8, 2022, a further letter dated April 21, 2022, and the Complaint.

Furthermore, the initial use of the Domain Name to merely direct to a copy of the Complainant's previous official website cannot be considered a *bona fide* use in light of the overall circumstances of this case.

Finally, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety is likely to trigger a high risk of implied affiliation especially in light of the overall circumstances of the case including the redirection of the Domain Name to a copy of the Complainant's previous official website. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark 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 trade mark 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 of a 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.

The Domain Name reproduces the HOMEO(-)PHYTO trade mark of the Complainant in its entirety, and especially noting the direction of the Domain Name to the Complainant's site the Panel does not consider the registration of the Domain Name to be a coincidence.

This is even more likely given (i) the reputation of the HOMEO(-)PHYTO trade mark in France, the Respondent's country of residence, (ii) the fact that the Domain Name was acquired by the Complainant from the previous registrant of the Domain Name, which subsequently was inadvertently let to lapse, (iii) the fact that the acquisition by the Complainant of the "homeophyto" brand was publicized in the French media, and (iv) the fact that the trade mark of the Complainant is reproduced identically in the Domain Name and it directed to the Complainant's own site for some time. The Panel finds it more likely than not that the Respondent knew of the Complainant's acquisition of the brand "homeophyto", with an intent to target the Complainant.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for the use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is being used in bad faith.

The use of the Domain Name to first direct to a copy of the Complainant's previous official website and then to direct to a website in the same field of activity as the Complainant's can only serve to increase confusion that the Domain Name is somehow affiliated with or authorized by the Complainant (See *PayPal Inc. v. Jon Shanks*, WIPO Case No. [D2014-0888](#) and *AXA S.A., AXA Investment Managers S.A. v. Domains By Proxy, Inc. / Adam Long*, WIPO Case No. [D2009-0452](#)). In addition, the current website associated with the Domain Name contains advertising including via pop-up windows, and this suggests that by using the Domain Name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is being used in bad faith, especially as the Respondent had been put on notice twice by the Complainant even before the Complaint was filed.

Thus, the Panel finds that the Domain Name is also 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 Domain Name <homeophyto.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: October 11, 2022