

ADMINISTRATIVE PANEL DECISION

Biological E. Ltd v. Domains By Proxy, LLC / Young Jin Hong, ITL
Case No. D2022-3112

1. The Parties

The Complainant is Biological E. Ltd, India, represented by Kayser & Company, India.

The Respondent is Domains By Proxy, LLC, United States of America ("USA") / Young Jin Hong, ITL, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <corbevax.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 23, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 24, 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 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 amended Complaint on August 30, 2022. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on September 3, 2022.

The Center verified that the Complaint together with the amendment to the Complaint and 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 September 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 28, 2022.

The Center appointed Leon Trakman as the sole panelist in this matter on September 30, 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 registered its trademark CORBEVAX with the Office Registrar of Trademarks in India on December 24, 2020. The registration encompassed: vaccine preparations, human vaccine preparations, and oral vaccine preparation goods. The registration number is 4793901, and the goods are included in Trademarks, Class 05.

CORBEVAX was approved for emergency use for children in the age group of 5-12 years. It was subsequently approved as a heterologous COVID-19 booster dose for emergency use by individuals aged 18 years and above after 6 months of receiving two doses of primary vaccines, COVAXIN or COVISHIELD. CORBEVAX was India's first vaccine approved as a heterologous Covid-19 booster. The Indian Government purchased 300 million doses of CORBEVAX.

The disputed domain name was registered on June 5, 2021.

5. Parties' Contentions

A. Complainant

The Complainant alleges that;

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1));
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2)); and
3. The disputed domain name was registered and is being used in bad faith (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3)).

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel determines that the disputed domain name is identical to the Complainant's trademark CORBEVAX. The only difference is that the disputed domain name includes the generic Top-Level Domain ("gTLD") suffix ".com".

The Panel determines, without any reasonable doubt, that the disputed domain name is identical to the Complainant's trademark. This decision is reached in accordance with Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1).

B. Rights or Legitimate Interests

The Panel determines that the Respondent has no legitimate right or interests in the disputed domain name.

There is no evidence on record indicating that the Respondent is associated with the disputed domain name, either personally or commercially, or through an agent or other third party.

It is arguable, but less clearly so, that the Respondent was aware of the Complainant's name and trademark at the time of registering the disputed domain name, given the global significance of COVID-19; the emphasis placed on vaccines to ameliorate its devastating impact on human health; and the existence of CORBEVAX as one such vaccine.

However, the name, CORBEVAX is distinctive. The name CORBEVAX, registered as a trademark in December 2020, consists of the following element: The prefix COR, derived from CORONA. The phrase BE, derived from the Complainant's business name, Biological E. Ltd. The suffix, Vax, being an abbreviation of the name VACCINE. Given its roots in these phrases, it is reasonable to conclude, as contended by the Complainant, that it had devised that name. It is unlikely to be replicated in the absence of knowledge of the Complainant's trademark.

What renders this determination less clear, but not decisive, is the fact that the Complainant's long-standing business in developing the applicable vaccine is in India, and widely known there. It is less widely known globally, including at the time when the disputed domain name was registered. The fact that the Complainant is in the process of applying for trademark registrations in the USA, China, Malaysia, Pakistan, Brazil, Colombia, Mexico, Egypt, Morocco, Türkiye, Viet Nam, Nepal and Bangladesh, is insufficient to demonstrate that its trademark was globally known. The Complainant's vaccine is centered in India. Its products are widely used there, but somewhat less so outside of India.

Nevertheless, given that the disputed domain name is identical to the Complainant's trademark, that the Respondent is not known by the disputed domain name and was never authorized to use that name; the unusual name, CORBEVAX; and it is distinctive to the Complainant, the Respondent is unlikely to have replicated it in the absence of knowledge of the Complainant's trademark.

The Panel therefore concludes that the Respondent registered the disputed domain name in the absence of the requisite rights or legitimate interests sufficient to satisfy the requirements specified in the Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2).

C. Registered and Used in Bad Faith

The Panel determines that the Respondent registered and is using the disputed domain name in bad faith.

It is reasonable to determine on the facts that the Respondent is in bad faith in assuming that, should its website be activated, or sold to a third party for such activation, Internet users would believe that its use was authorized by the Complainant, its agent or other representative.

It is also reasonable, but not incontrovertible, to determine that the Respondent was aware that Internet users would likely be confused and misled into believing that the disputed domain name is associated with the Complainant's trademark, and through it, with the Complainant's business in developing and selling vaccines.

Reasonable, too, is the assumption that the Respondent was aware that its use of the disputed domain name constituted a threat to the Complainant's business, particularly to its reputation in its field of operation. It also constituted a threat to Internet users who accessed the website or other location on the assumption that it was entering the domain name of the Complainant.

Given these reasonable assumptions, it is probable that the Respondent placed itself into the adventitious position of being able to attract, for commercial gain, Internet users to its website or other on-line location. It did so by creating the likelihood of confusion between the disputed domain name and the Complainant's mark relating to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location, or of goods on the Respondent's website or other location

The fact that the Respondent is not using the website except for a page with a pay-per-click link is not a reasonable basis for determining the absence of bad faith use. On the contrary, the Respondent's registration and use is in bad faith in providing a means, through which to engage in that bad faith use subsequently, for profit, at the expense of the Complainant and Internet users accessing that website or other location.

The Panel determines that the disputed domain name was registered and is being used in bad faith as provided for in Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3).

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, <corbevax.com>, be transferred to the Complainant.

/Leon Trakman/

Leon Trakman

Sole Panelist

Date: October 11, 2022