

ADMINISTRATIVE PANEL DECISION

Astellas Pharma Inc. v. 19TH HOLE PRODUCTIONS, INC.
Case No. D2022-3263

1. The Parties

The Complainant is Astellas Pharma Inc., Japan, represented internally.

The Respondent is 19TH HOLE PRODUCTIONS, INC., United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <astellasconnections.com> (the “Disputed Domain Name”) 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 September 1, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 7, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 10, 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, Astellas Pharma Inc., is the main shareholder of the Astellas global group of companies which manufactures and sells pharmaceutical products.

The Complainant is the owner of several trademarks consisting of the sign ASTELLAS, such as the following:

- ASTELLAS, United States word mark registered with the United States Patent and Trademark Office (“USPTO”) on January 9, 2007, under number 3195446 in classes 5, and 44; and
- ASTELLAS, United Kingdom word mark filed with the United Kingdom Intellectual Property Office (“UKIPO”) on September 13, 2004, under number 2372794 in classes 1, 5, 10 and 44.

The Disputed Domain Name was registered on April 1, 2015 and resolves to a website which appears to offer information about healthcare professionals.

The Complainant claims that it tried to contact the Respondent several times without success, but did not provide any evidence related to these attempts to contact.

5. Parties’ Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trademark in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent has not been commonly known by the Disputed Domain Name and has not been authorized by the Complainant to use the ASTELLAS trademark and company name. In the Complainant’s view, the Respondent more than likely registered the Disputed Domain Name with the intention of taking unfair advantage of the Complainant’s mark. Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent registered and uses the Disputed Domain Name to intentionally attract visitors for commercial gain by creating confusion with the Complainant’s trademark.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the

Complainant has rights; and

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

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

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's ASTELLAS trademarks have been registered and used in various countries in connection to the Complainant's pharmaceuticals business, including in the country where the Respondent is located.

The Disputed Domain Name incorporates the Complainant's ASTELLAS trademark in its entirety, simply adding the term "connections". Where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

Additionally, it is well established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's ASTELLAS trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the information provided by the Registrar, the Respondent is "19TH HOLE PRODUCTIONS, INC.". The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's ASTELLAS trademark in its entirety and simply adds the descriptive term "connections". In view of the distinctive character of the Complainant's mark, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Panel observes that the Disputed Domain Name resolves to a website which appears to offer information about healthcare professionals. A login is required to access more detailed information, but the menu lists therapeutic areas in which the Complainant claims to be active such as “cardiology” or “oncology”. In the Panel’s view, the content of this website can be considered as at least indirectly related to the Complainant’s pharmaceuticals business. More importantly, based on the Panel’s own limited research, the Panel observes that the website prominently depicts the Complainant’s mark and logo as used on the Complainant’s official website. In the Panel’s view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent very likely knew of the Complainant and its trademark rights when it registered the Disputed Domain Name:

- the Disputed Domain Name includes the Complainant’s distinctive trademark in its entirety;
- the Disputed Domain Name was registered years after the registration of the Complainant’s mark in the country where the Respondent is located; and
- the website linked to the Disputed Domain Name not only mentions the Complainant’s mark but also the stylized version of this mark including the logo as used on the Complainant’s official website.

In the Panel’s view, the Respondent’s awareness of the Complainant’s trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Respondent has used the Disputed Domain Name to resolve to a website which appears to offer information about healthcare professionals. As mentioned above, this website includes a stylized version of the Complainant’s mark combined with a logo as used on the Complainant’s official website. In the Panel’s view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trademark.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on

the third and last element 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 <astellasconnections.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: October 24, 2022