

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. Alex St maximin, LABORATOIRE THEA
Case No. D2022-4648

1. The Parties

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

The Respondent is Alex St maximin, LABORATOIRE THEA, France.

2. The Domain Name and Registrar

The disputed domain name <laboratoirethea.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 December 19, 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 December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on January 17, 2023. 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, Laboratoires Thea, is a French pharmaceutical company specialized in the research, development and commercialization of eye-care products.

It was founded more than 25 years ago and has an international presence, with products available in more than 70 countries worldwide, through its subsidiaries, licensees and distributors.

The Complainant's activities are protected by several trademarks registrations consisting in whole or in part in the THEA denomination, such as:

THEA, French trademark registration filed on January 21, 1994, registered under No. 94502704, regularly renewed since then, and designating products of class 5;



, French trademark registration filed on January 27, 1994, registered under No. 94503566, regularly renewed since then, and designating products of class 5; and

THEA, International trademark No. 996576 registered on September 26, 2008, regularly renewed since then, designating products and services of classes 3, 5, 10, 35, 39, 41 and 44, and notably protected in European Union, Australia, Japan, Republic of Korea, China, and Russian Federation.

The Complainant has also an online presence, notably through the <laboratoires-thea.com> domain name which was registered on November 15, 2002, and which directs to its official website.

Very little is known about the Respondent, except that he is apparently located in France according to the information disclosed by the Registrar.

The disputed domain name was registered on December 1, 2022.

At the time of drafting this decision, it does not resolve to any active website.

However, it results from the record of the case that the disputed domain name:

- previously directed toward a parked website that displayed pay-per-click links notably in the pharmaceutical and medical fields,
- was used to send emails by which the Respondent, by deceitfully pretending to an employee of the Complainant, has attempted to purchase goods from third companies by requesting a 30-day payment term after the invoice date.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name, and its main arguments can be summarized as follows:

The Complainant contends that the disputed domain name is confusingly similar to its LABORATOIRES THEA and THEA trademarks, in substance because the ".com" generic Top Level Domain ("gTLD") can be

disregarded due to its technical function, and because its trademarks are entirely reproduced within the disputed domain name, with the exception of the letter “s” at the end of the term “laboratoire”, which does not prevent its trademarks from being recognizable.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name because i) he has not been authorized by the Complainant to use its trademarks, ii) he is not in any way related to the Complainant, and iii) he is not known under the disputed domain name.

The Complainant claims that the disputed domain name was registered in bad faith notably because i) it is confusingly similar with its prior trademarks, ii) said trademarks are both intrinsically distinctive and well-known, and iii) a mere search for “laboratoire thea” conducted with an Internet search engine reveals the Complainant’s activities.

The Complainant contends that the Respondent has used the disputed domain name in bad faith in particular because i) said disputed domain name resolves to a parking page promoting competing activities and ii) because the Respondent has used it for fraudulent activities, namely sending emails impersonating the Complainant for commercial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that for obtaining the transfer or the cancellation of the disputed domain name, the Complainant must establish each of the following three elements:

- (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.

Besides, paragraph 15(a) of the Rules provides that “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

Annexes E1 to E6 to the Complaint show trademarks registrations for THEA and LABORATOIRES THEA in the name of the Complainant, in particular those detailed in section 4 above.

Besides, there is no difficulty in finding that the disputed domain name is confusingly similar to the Complainant's trademarks.

Indeed, regarding the gTLD, it is of constant practice among the UDRP panels that it may be ignored for the purpose of assessing the confusing similarity, because it plays a technical function.

Then, the disputed domain name reproduces the LABORATOIRES THEA trademark almost identically, and the THEA trademark identically.

As indicated in [WIPO Overview 3.0](#), section 1.7, “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark (...), the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

As far as the LABORATOIRES THEA trademark is concerned, the sole difference with the disputed domain names lies in the omitting of the letter “s”. Such a difference is not of a nature to prevent a finding of confusing similarity, as it is almost unnoticeable and therefore the LABORATOIRES THEA trademark remains clearly recognizable within the disputed domain name. In this respect, there is a consensus view among UDRP panels that a domain name containing a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (see [WIPO Overview 3.0](#), section 1.9).

Consequently, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name at issue. Once such a *prima facie* case is made, the respondent carries the burden of production demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy ([WIPO Overview 3.0](#), section 2.1; or for instance *Applied Materials, Inc. v. John Warren*, WIPO Case No. [D2020-0950](#)).

In this case, the Respondent has not been authorized by the Complainant to register and to use the disputed domain name.

Besides, according to the record of the case, the disputed domain name was, among other, used to send emails by which the Respondent has impersonated the Complainant to try to order goods in the name of the latter and more than likely without having the intent to further paying the vendor (in particular because he requested a payment term after the invoicing date).

Obviously, such use of the disputed domain name, which is not refuted by the Respondent, does not amount to a legitimate noncommercial or fair use of the disputed domain name. On the contrary, such use is made with intent for commercial gain by misleadingly diverting the recipient of the fraudulent emails and may also tarnish the Complainant's trademarks. In this respect, panels have categorically held that the use of a domain name for illegal activity (such as phishing or impersonation) can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13; or *Colas, Société Anonyme v. Concept Bale*, WIPO Case No. [D2020-2733](#)).

At last, the Respondent has filled-in the WhoIs database pretending being named “Laboratoire Thea”, what is reflected in the disputed domain name.

However, given the use that has been done of the disputed domain name (namely, deceitfully impersonating the Complainant), the Respondent cannot credibly and legitimately be considered commonly known by the disputed domain name.

In this case, everything conduces to consider that such a way to fill in the Whois database is part of the fraudulent scheme elaborated by the Respondent (to lure the recipients of the fraudulent emails, in the event where they would conduct a Whois search on the disputed domain name, to believe that it is held by the Complainant).

In view of all the above, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has had an opportunity to rebut the Complainant's contentions but has not done so.

Consequently, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and accordingly that the second element in paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that a complainant must establish that a respondent registered and is using the disputed domain name in bad faith.

The circumstances deemed to be evidence of the registration and use of a domain name in bad faith listed at paragraph 4(b) of the Policy are non-exhaustive examples.

1) Registration in Bad Faith

In the present case, the Panel notes that:

- the use of the LABORATOIRES THEA and THEA trademarks by the Complainant predates by more than 25 years the registration of the disputed domain name, which is extremely close of the latter;
- the Complainant's trademarks are intrinsically distinctive and other UDRP panels have already found them as having a reputation and a goodwill (see notably *Laboratoires Thea v. Yu Liu, Wangluochuanmei*, WIPO Case No. [D2022-2253](#); *Laboratoires Thea v. 王先生 (Wang Xian Sheng)*, WIPO Case No. [D2022-0787](#) or *Laboratoires Thea v. Jun Tsuchikura*, WIPO Case No. [D2021-4367](#));
- the Complainant has demonstrated that a mere search on an Internet search engine conducted on "laboratoire thea" reveals its rights in the first results,
- the Respondent has registered the disputed domain name indicating to the Registrar an identity almost identical to the Complainant's company name and to its LABORATOIRES THEA trademark,
- the disputed domain name has been used, less than a week after its registration, to send emails deceitfully impersonating the Complainant;
- the Respondent, by remaining silent in the present procedure, has not contested the Complainant's contentions.

It necessarily results from the above findings that the Respondent registered the disputed domain name being fully aware of the Complainant's prior rights.

2) Use in Bad Faith

As mentioned above, the Respondent intentionally used the disputed domain name by fraudulently impersonating the Complainant to try to purchase goods from third companies.

Such conduct is deceptive, illegal, and made for commercial gain. In that regard, it is consistently held that the use of a domain name for illegitimate activity, such as fraudulent email scheme, is considered as manifest evidence of bad faith (see [WIPO Overview 3.0](#), sections 3.1.4 and 3.4).

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of 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 <laboratoirethea.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: January 30, 2023