

ADMINISTRATIVE PANEL DECISION

Sanofi v. Rohit Jain

Case No. D2022-4910

1. The Parties

Complainant is Sanofi, France, represented by Marchais & Associés, France.

Respondent is Rohit Jain, India.

2. The Domain Name and Registrar

The disputed domain name <ambienstore.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 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 Complainant on December 27, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 28, 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 Respondent of the Complaint, and the proceedings commenced on January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 25, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on January 30, 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

Complainant is a company organized under the laws of France that is active in the pharmaceutical industry, belonging to the world's largest multinational pharmaceutical companies by prescription sales and settled with about 100,000 employees in more than 100 countries worldwide.

Complainant has provided evidence that it is the registered owner of several trademarks relating to its brand AMBIEN, including, but not limited to the following:

- Word mark AMBIEN, European Union Intellectual Property Office (EUIPO), registration number: 00399199, registration date: November 28, 2005, status: active;
- Word mark AMBIEN, World Intellectual Property Office (WIPO), registration number: 605762, registration date: August 10, 1993, status: active.

Moreover, Complainant has demonstrated to own various domain names relating to its AMBIEN trademark, e.g. since 2000 the domain name <ambien.com> which resolves to Complainant's official website at "www.ambien.com", promoting Complainant's AMBIEN products and related services.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of India who registered the disputed domain name on December 6, 2022. By the time of rendering this decision, the disputed domain name resolves to a typical default page provided by the Registrar. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.ambienstore.com", offering pharmaceutical products of Complainant's direct competitors for online sale under the heading "AMBIENSTORE BUY AMBIEN ONLINE".

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant submits that the disputed domain name is confusingly similar to Complainant's AMBIEN trademark, as it reproduces the latter in its entirety, simply added by the descriptive and generic term "store", which obviously refers to Complainant's activities in selling medication. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) the word "Ambien" has no meaning and is therefore highly distinctive, (2) Complainant has never licensed or otherwise authorized Respondent to use its AMBIEN trademark, or to register any domain name including the same, and (3) Respondent offers under the disputed domain name pharmaceutical products of other pharmaceutical laboratories such as Roche etc. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's AMBIEN trademark has no particular meaning and is therefore highly distinctive, (2) Respondent is likely to have had at least constructive, if not actual notice of Complainant's AMBIEN trademark by the time of registering the disputed domain name, and (3) as the disputed domain name directs Internet users to a website which is not Complainant's official website for AMBIEN products, it is evident that Respondent has registered and is using the disputed domain name for the purpose of trying to gain unfair benefit of Complainant's goodwill and reputation.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the AMBIEN trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's AMBIEN trademark in its entirety, added by the term "store". Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among UDRP panels, that the addition of other terms (whether *e.g.* descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP (see [WIPO Overview 3.0](#), section 1.8). Accordingly, the addition of the term "store" is not in contrast to find confusing similarity arising from the incorporation of Complainant's entire AMBIEN trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's AMBIEN trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "ambien" on its own. To the contrary, the disputed domain name, at some point before the filing of the Complaint, resolved to a website at "www.ambienstore.com", offering pharmaceutical products of Complainant's direct competitors for online sale, thereby prominently displaying Complainant's AMBIEN trademark twice in the heading "AMBIENSTORE BUY AMBIEN ONLINE" without any authorization to do so. Such making use of the disputed domain name obviously neither qualifies as a *bona fide* offering of goods or services nor as using the disputed domain name for a legitimate, noncommercial, or fair purpose.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to

Respondent to come forward with appropriate evidence demonstrating rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

Resolving the disputed domain name, which includes Complainant's AMBIEN trademark in its entirety, to a website at "www.ambienstore.com", offering pharmaceutical products of Complainant's direct competitors for online sale, thereby prominently displaying Complainant's AMBIEN trademark twice in the heading "AMBIENSTORE BUY AMBIEN ONLINE" without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant's AMBIEN trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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 <ambienstore.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: February 13, 2023