

ADMINISTRATIVE PANEL DECISION

Limited Liability Company “Pharmagate” v. Taras Potichnyi Case No. D2022-4997

1. The Parties

The Complainant is Limited Liability Company “Pharmagate”, Ukraine, represented by Asters Law Firm Attorneys’ Partnership, Ukraine.

The Respondent is Taras Potichnyi, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <pharmagate.org> 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 December 27, 2022. On December 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2023, 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 January 9, 2023.

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 January 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on February 21, 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 is a Ukrainian company founded in 2011 and since then providing support to pharmaceutical companies in research, regulatory approval, quality, and safety assurance of medicines, medical devices, and other healthcare products in Ukraine. The Complainant owns several registrations for its PHARMAGATE trademark in various jurisdictions, including for instance Ukrainian trademark registration No. 162931, registered on October 25, 2012.

The Complainant provides its services also via its websites at “www.pharmagate.com.ua” and “www.pharmagate.kiev.ua”.

The disputed domain name was registered on July 1, 2022 and resolves to a website where it is stated that it is operated by non-governmental organization (“NGO”) “Pharmagate”. The website criticizes certain global pharmaceutical manufacturers for importing and selling drugs in the Russian Federation and *inter alia* calls patients to refrain from buying drugs from particular companies. The website is in English and Ukrainian and provides links to its related pages in social media.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name incorporates and is identical to the Complainant's trademark. The “.org” portion of the disputed domain name should be disregarded when comparing it with the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name. The Respondent registered the disputed domain name after the Complainant registered its trademarks. The Respondent's identity in the Whois record was masked and the disputed domain name is not being used to promote any business or any other online service that might give rise to the Respondent being commonly known by the disputed domain name. There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark at issue. The disputed domain name is operated by an NGO and is used for the purposes of a genuine noncommercial website which provides information on global pharmaceutical manufacturers that continue to import and sell non-essential drugs in the Russian Federation. The disputed domain name is identical to the Complainant's trademark, thus it carries a high risk of implied affiliation with the Complainant. The Respondent's website at the disputed domain name does not include any link (including with explanatory text) to the Complainant's official website to the effect that it is not affiliated with the Complainant. The Respondent is not associated or affiliated with the Complainant. The Complainant has not granted any authorization or license to the Respondent to use the Complainant's trademarks, including to register the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Complainant is widely known in Ukraine and other Commonwealth of Independent States (“CIS”), as well as in the United Kingdom and Georgia for the services in providing support to clients in the field of research, regulatory approval, quality, and safety assurance of medicines, medical devices, and other products in the field of healthcare. Since the Complainant's trademark has been used for a long period of time prior to the registration of the disputed domain name and since the disputed domain name is identical or confusingly similar to the Complainant's trademark, the Respondent should have been aware of the Complainant's trademark and its activity, when registering the disputed domain name. It is more likely than not that the Respondent had the Complainant's trademark in mind when registering the disputed domain name. The Respondent's website at the disputed domain name provides information on the pharmaceutical market (the services that the Complainant also provides). The potentially noncommercial nature of the Respondent's website should not be decisive in assessing bad faith use of the disputed domain name, as it is not relevant that Internet users may appreciate the true nature of the Respondent's website upon reaching that website, because they will unfairly have

been attracted to that website in the first place by the misleading nature of the disputed domain name. The overall circumstances of the evidence that the Respondent sought to take unfair advantage of the Complainant's trademark by attracting Internet users to the Respondent's website by the misleading nature of the disputed domain name and, therefore, point to the Respondent's registration and use of the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".org" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark with no other additions.

Considering the above the Panel finds the disputed domain name is identical to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate his rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

According to section 2.6 of the [WIPO Overview 3.0](#), UDRP jurisprudence reflecting a consensus of panel views recognizes that the use of a domain name for fair use such as noncommercial free speech would in principle support a respondent's claim to a legitimate interest under the Policy. Panels have however found that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation. In the present case the Panel finds that the disputed domain name is identical to the Complainant's trademark and in addition, it is targeting users related to pharmaceutical industry particularly in Ukraine, same as the Complainant does. Such circumstances create a risk of user confusion by the disputed domain name through impersonation.

Considering the above the Panel finds the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark, panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. In the present case, the Respondent registered the disputed domain name identical to the Complainant's trademark and used it to target users related to the same industry in Ukraine, similarly as the Complainant did for over a decade already. The Panel finds that under such circumstances on the balance of probabilities the Respondent knew, or at least should have known about the existence of the Complainant's prior registered trademark known in the pharmaceutical sphere in Ukraine, which confirms the bad faith.

The Panel finds that the Respondent has used for its criticism website the disputed domain name which is likely to be seen as a misrepresentation to Internet users that it would somehow be connected with the Complainant, or the disputed domain name would "catch by surprise" visitors intending to reach the Complainant's website, which confirms the registration and use in bad faith (see, e.g., *Puravankara Projects Limited v. Saurabh Singh*, WIPO Case No. [D2014-2054](#)).

The Panel notes that it makes no finding – and it is not qualified to make a finding – in relation to the content of the criticism website which in the abstract the Respondent is free to engage in. The issue here is solely the nature of the identical disputed domain name to the Complainant's mark, which the Respondent has opted to register and use in conjunction with its website.

The Respondent ignored its possibility to comment to the contrary and provide any explanations to prove its good faith while registering and using the disputed domain name. The Panel notes in this regard that given that the domain name may be seen as having multiple meanings, i.e., the "gate" appendage being a generally-recognized signal of a scandal (irrespective of and coincidental to the Complainant's mark), the Panel would have been prepared to assess any Respondent arguments in this regard.

Considering the above, the Panel finds the Complainant has established its case under 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, <pharmagate.org> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: March 3, 2023