

## **ADMINISTRATIVE PANEL DECISION**

Tosara Pharma Ltd. v. Carolina Rodrigues, Fundacion Comercio Electronico  
Case No. D2022-5036

### **1. The Parties**

The Complainant is Tosara Pharma Ltd., Ireland, represented by SILKA AB, Sweden.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

### **2. The Domain Name and Registrar**

The disputed domain name <sudocrema.com> (the “Disputed Domain Name”) 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 30, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 4, 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, Domain by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 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 amendment to the Complaint on January 12, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 3, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on February 8, 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 wholly owned subsidiary of the NYSE listed Israeli multinational pharmaceutical company Teva Pharmaceutical Industries Ltd, and operates a business founded in 1954 that produces and markets topical creams, antiseptic creams, cough drops, pain medicine, antibiotics, psoriasis medicines, infection medication, and other pharmaceuticals including an over-the-counter medicated cream that was invented in 1931 and is sold under the brand name “Sudocrem”, available in more than 40 countries, for the treatment of sore skin, nappy rash, eczema, and acne with estimated annual global sales of 34.5 million units.

The Complainant holds a number of registrations for the trademark SUDOCREM in numerous jurisdictions including, for example: Australian Registration No. 250234 for the mark SUDOCREM, registered on July 20, 1971, and International Registration No. 886513 for SUDOCREM, registered on May 19, 2006.

The Complainant owns numerous domain names that comprise or contain the trademark SUDOCREM, including the domain name <sudocrem.com>.

The Disputed Domain Name was registered on October 19, 2022, and resolved to a pay-per-click (“PPC”) parking page that included links to services that compete with those of the Complainant.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant cites several trademark registrations in various jurisdictions as *prima facie* evidence of ownership of the mark SUDOCREM.

The Complainant submits that its rights in the mark SUDOCREM predate the Respondent’s registration of the Disputed Domain Name. The Complainant submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates the SUDOCREM trademark in its entirety, and that the confusing similarity is not removed by the addition of the letter “e”, or the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because “[t]he Respondent is neither a licensee and/or an authorized agent of the Complainant nor in any other manner authorized to use the Complainant’s distinctive trademark SUDOCREM” and none of the circumstances set out in paragraph 4(c) of the Policy apply. The Complainant also contends that “[t]he parking of the [D]isputed Domain Name with health related PPC links (along with active MX [mail exchange] records)” is not use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules having regard to the prior use and targeting of the Complainant’s trademarks, and, it submits, “it is not possible to conceive of any plausible actual or contemplated good faith use of the Disputed Domain Name by the Respondent.”

## B. Respondent

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

## 6. Discussion and Findings

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

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the 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.

### A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark SUDOCREM. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any jurisdiction. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the SUDOCREM trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's SUDOCREM trademark; (b) followed by the letter "e"; and (c) followed by the generic gTLD ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "sudocreme".

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, 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 mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the additional letter "e" in the Disputed Domain Name does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademark since it is can be viewed as a common, obvious, or intentional misspelling, which is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant needs only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted, or authorized the Respondent to use the Complainant's trademark and for that reason the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "[t]he [D]isputed Domain Name incorporates a trademark which is neither owned by the Respondent, nor is the Respondent commonly known by the name ["Sudocrem"] either as an individual, business, or any other organization."

The Respondent is not an authorized reseller with legitimate interests in the Disputed Domain Name incorporating the Complainant's mark. Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name. The Panel accepts the Complainant's uncontested submission that "the Respondent is not making a legitimate noncommercial or fair use of the [Disputed] [D]omain [N]ame, but has an intention for commercial gain to misleadingly divert consumers and tarnish the trademark at issue, given (a) the distinctive nature of the mark; (b) huge popularity of the Complainant and its Trademark; (c) attempt of the Respondent to defraud prospective customers by the use of the email, as evident from active MX records; (d) Lastly, the unauthorised parking of the [D]isputed Domain Name displaying health related links."

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant for the purpose of misleading consumers based on users seeking out the Complainant's mark SUDOCREM and opportunistically using the Complainant's trademark to divert Internet traffic to its PPC landing page.

The Panel finds for the Complainant on the second element of the Policy.

### **C. Registered and Used in Bad Faith**

The third element of the Policy that a complainant must also demonstrate is that the domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, this Panel infers that the Respondent has deliberately targeted the Complainant's brand when it registered the Disputed Domain Name and knew, or should have known, that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's trademark (see [WIPO Overview 3.0](#), section 3.2.2).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name, along with the composition of the Disputed Domain Name (containing an exact reproduction of the Complainant's well-known trademark) in the circumstances of this case is a further indicator of bad faith. (See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration by approximately 51 years.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name resolved to a PPC landing page displaying keywords including "Best Skin Care for Aging Skin", "Creams", and "Lotion." This Panel accepts the Complainant's uncontested evidence as evidence of bad faith use.

The Panel finds that the Respondent cannot disclaim responsibility for content appearing on the PPC web-page associated with the Disputed Domain Name even though such links are generated by a third party platform, for the reason that there appear to have been no positive efforts by the Respondent to seek to prevent a finding of bad faith, such as by using negative keywords to avoid links such "Best Skin Care for Aging Skin", "Creams", and "Lotion" which plainly target the Complainant's mark (see [WIPO Overview 3.0](#), section 3.5). Targeting of this nature is a common example of use in bad faith as referred to in paragraph

4(b) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

This Panel finds that this is a case of classic cybersquatting where the Respondent has taken a recognizable version of the Complainant's trademark SUDOCREM and incorporated it in the Disputed Domain Name without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain.

The Panel also notes that the Disputed Domain Name was listed for sale on the aftermarket for USD 999, which appears likely to exceed out of pocket costs incurred by the Respondent's in registering the Disputed Domain Name. Targeting of this nature is another common example of bad faith.

There is also evidence that the MX record has been activated for the Disputed Domain Name, allowing email to be routed to a mail server, and so the Panel makes a further finding of bad faith under the Policy given the increased risk of fraud or phishing involving the Disputed Domain Name by creating a likelihood of confusion with the Complainant's mark (see [WIPO Overview 3.0](#), section 3.1.4).

The Panel also observes that the Respondent named as Carolina Rodrigues, Fundacion Comercio Electronico has been the unsuccessful respondent in more than 320 other UDRP proceedings that are easily located by a search of the Center's public website. The Panel therefore finds that that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct ([WIPO Overview 3.0](#), section 3.1.2).

The privacy or proxy service, Domains By Proxy, LLC, is also named in at least 253 of those UDRP decisions as a co-respondent with serial offender Carolina Rodrigues. The sheer number of these adverse decisions involving a known bad actor indicates to this Panel a pattern of conduct that evidences an absence of positive effort to distance itself from the behavior and supports a further finding of bad faith against the Respondent and the Panel exercises its discretion to so find even though there is no indication of a relationship beyond the provision of privacy or proxy registration services (See [WIPO Overview 3.0](#), section 4.4.5).

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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, <sudocrema.com>, be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: February 9, 2023