

ADMINISTRATIVE PANEL DECISION

Spark Therapeutics, Inc. v. Gural Singh
Case No. DCO2022-0009

1. The Parties

The Complainant is Spark Therapeutics, Inc., United States of America (“United States”), represented by Ballard Spahr LLP, United States.

The Respondent is Gural Singh, India.

2. The Domain Name and Registrar

The disputed domain name <sparkbiotech.co> 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 February 2, 2022. On February 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 4, 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 the Complainant on February 7, 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 amendment to the Complaint on February 7, 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 the Respondent of the Complaint, and the proceedings commenced on February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. The Respondent did not submit any response, except that on February 21, 2022, the Center received two emails from the Respondent. Accordingly, the Center notified the Parties on March 7, 2022 that it would proceed to the panel appointment process.

The Center appointed Steven A. Maier as the sole panelist in this matter on March 17, 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 is a corporation organized under the laws of Delaware, United States, having its principal place of business in Philadelphia, United States. It is biotechnology company specializing in gene therapy cures.

The Complainant is the owner of trademark registrations for the mark SPARK, including United States registration number 5068997 for the word mark SPARK, registered on October 25, 2016 for goods and services in International Class 5, including “biologic preparations for use in the diagnosis and treatment of retinal degenerative and hematologic disorders and diseases”.

The disputed domain name was first registered on July 17, 2017. According to evidence submitted by the Complainant, it was acquired by the Respondent on or around July 26, 2020.

The Complainant also submits evidence that the disputed domain name has resolved to a website at “www.sparkbiotech.co”. The website is headed “SPARK BIO-TECH” and includes supposed details about the company’s pharmaceutical goods and services. It includes a “Contact Us” link. The website concludes with the text: “© Spark Pharma 2016 All Rights Reserved | Spark Pharma, [...] United States.”

5. Parties’ Contentions

A. Complainant

The Complainant states that it is a globally-recognized, industry-leading company which has traded under the distinctive name SPARK since 2013. It refers to its business and promotional activities conducted from websites including “www.sparkmedical.com”, “www.sparkgenetherapeutics.com” and “www.sparktherapeutics.com”. The Complainant also refers to the development of certain therapies for which its achievements have been heralded in the industry.

The Complainant provides evidence that its own business address, as stated on its websites, is the same as the address provided on the website resolving from the disputed domain name.

The Complainant submits that the disputed domain name is confusingly similar to its trademark SPARK. It contends in particular that the Respondent’s addition of the term “biotech” in the disputed domain name does not prevent its trademark from being recognizable within the disputed domain name.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no affiliation with the Respondent, that the Respondent is not known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services. Instead, the Complainant contends that the Respondent has used the disputed domain name for the purpose of a website which fraudulently mimics the Complainant’s own website, presumably for financial gain.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. It contends that the Respondent clearly acquired the disputed domain name for the purpose of masquerading as the Complainant and confusing Internet users. It states in particular that there can be no innocent explanation for its use of a website which impersonates the Complainant’s own website including its business address. The Complainant submits that the Respondent intends to derive a commercial benefit

from its deception, either by offering pharmaceutical products to visitors to its website or by potentially obtaining personal and/or financial information via its “Contact Us” link (although the Complainant concedes that that link does not appear to have been active at the time of the Complaint submission).

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response. However, in its first email to the Center (referred to above) it stated: “I am still unable to understand and relate to the case.” In its second such email it stated: “I get websites developed for people but unable to related to this email [sic]. The logo’s are different. The product is different. Is there a line I can use to speak with the person?”

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it has registered trademark rights in the mark SPARK. The disputed domain name incorporates this trademark in full, together with the term “biotech” which does not prevent the Complainant’s trademark from being recognizable within the disputed domain name. The Panel finds therefore that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant’s submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, save to assert that its website uses different logos and offers different products from the Complainant’s. The Respondent does not, however, address the fact that its website also adopts the Complainant’s business address as its own. The Panel therefore finds that the disputed domain name has been dishonestly used to resolve to a website which impersonates the Complainant. Such use by the Respondent cannot give rise to rights or legitimate interests in respect of the disputed domain name and the Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the disputed domain name to be inherently misleading in nature, on the basis that combining the Complainant’s SPARK trademark with a term relating to biotechnology will inevitably suggest to Internet users that the disputed domain name is owned or operated by, or otherwise affiliated with, the Complainant. Indeed, an Internet search conducted by the Panel for the term “spark biotech” returns results which are overwhelmingly related to the Complainant and its business.

Furthermore, the Panel considers it to be obvious from the Respondent's use of the disputed domain name that it registered and has used the disputed domain name deliberately to impersonate the Complainant and its website for the purpose of misleading Internet users. The Respondent's website even adopts the Complainant's business address as its own, which is a point which is conspicuously ignored in the Respondent's summary email replies to the Center.

The Panel infers from the Respondent's conduct, including its limited replies to the Center, that it has sought to take unfair advantage of the Complainant and its trademark for commercial gain.

In the circumstances, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds therefore that the disputed domain name has been registered and is being used in bad faith.

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 <sparkbiotech.co> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: March 30, 2022