

ADMINISTRATIVE PANEL DECISION

CVS Pharmacy, Inc. v. Chris Lynn, Buea
Case No. D2023-0134

1. The Parties

The Complainant is CVS Pharmacy, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Chris Lynn, Buea, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <cvspharmacyway.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 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 (Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 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 Complaint on January 13, 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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2023.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on February 14, 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 CVS Pharmacy, Inc., a United States based company and the principal operating one of CVS Health Corporation (“CVS Health”), a publicly traded corporation on the New York Stock Exchange. The Complainant holds many assets directly, including most of the relevant intellectual property, among which is the existing registrations for the CVS trademark and the domain names containing the CVS trademark.

CVS Pharmacy, Inc., and CVS Health are referred to interchangeably herein, as the context may require or allow, as “Complainant”. The Complainant is the premier health innovation company in the United States, with approximately 300,000 workers in more than 9,900 retail locations and approximately 1,100 walk-in medical clinics in 49 states.

The Complainant is the owner of over 520 trademark registrations in at least 27 countries or jurisdictions worldwide for marks that consist of or contain “CVS” or “CVS PHARMACY” (Annexes 11 and 12 of the Complaint). The Complainant’s registrations for these trademarks include the following in the United States:

- Reg. No. 919,941 for CVS (first used May 9, 1963; registered September 7, 1971)
- Reg. No. 1,698,636 for CVS (first used February 18, 1974; registered July 7, 1992)
- Reg. No. 1,904,058 for CVS (first used April 28, 1992; registered July 11, 1995)
- Reg. No. 2,048,916 for CVS/PHARMACY (first used 1983; registered April 1, 1997)
- Reg. No. 4,608,526 for CVS PHARMACY (first used 1980; registered September 23, 2014)

The Complainant is the registrant of and uses the domain names <cv.com> (created on January 30, 1996), and <cvshhealthpharmacy.com> (created on September 24, 2014), as evidenced in Annex 8 to the Complaint.

The disputed domain name was registered on May 15, 2022, and currently does not resolve to an active website. Nevertheless, the disputed domain name previously resolved to a website that was presented as belonging to the Complainant, by offering for sale prescription medications and stating, “we at CVS Pharmacy have gone beyond the boundaries to help people buy Xanax and Percocet online and various other medicines thus, have been successful in delivering medicines at their doorsteps”. This was detected via the Wayback Machine dated November 28, 2022, as evidenced in Annex 10 of the Complaint.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s marks registered and used worldwide.

The disputed domain name is composed of the Complainant’s CVS PHARMACY trademark, along with the addition of “way”, which has no impact on the confusing similarity between the disputed domain name and the Complainant’s trademark. On the contrary, the Complainant claims that the overall impression of the disputed domain name is that it is connected to the Complainant.

The Complainant owns several registrations worldwide for the trademarks CVS and CVS PHARMACY, as evidenced by Annex 11 to the Complaint. Also, evidence of the renown of the mark CVS and its several uses online was produced by various Annexes of the Complaint.

The disputed domain name adopted by the Respondent – a reproduction of the Complainant’s registered mark associated with the term “way” – show a clear intention of misleading the Internet users.

In addition, by using the disputed domain name in connection with a website that falsely appears to be a website for, or otherwise associated with, the Complainant – by including a text offering for sale prescription medications (Annex 10) – the Respondent has failed to create a *bona fide* offering of goods or services.

In sum, the Complainant alleges that the registration and use of the disputed domain name is intentional to mislead Internet users, that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- 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 to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name is, indeed, confusingly similar to the CVS and to the CVS PHARMACY trademarks, as both are entirely incorporated in the disputed domain name.

The Complainant has presented consistent evidence of ownership of the trademarks CVS and CVS PHARMACY in jurisdictions throughout the world, by presenting a substantial number of registrations for them, as well as comprehensive evidence of the use of the trademarks.

The additional term “way” in the disputed domain name does not prevent a finding of confusing similarity with the trademark.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

B. Rights or Legitimate Interests

Given the clear evidence that the trademarks CVS and CVS PHARMACY are registered in the name of the Complainant and are widely known as identifying the Complainant’s activities, and that the Complainant has not licensed this to the Respondent, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. Furthermore, the Respondent does not appear to be commonly known by the disputed domain name.

It has also been shown that the Respondent is not making any direct use of the disputed domain name, noting the disputed domain name does not resolve to an active website. The Respondent is not making a noncommercial or fair use of the disputed domain name, nor a *bona fide* offering of goods or services.

However, the disputed domain name previously resolved to a website that was presented as belonging to the Complainant, by offering for sale prescription medications and stating, “we at CVS Pharmacy have gone beyond the boundaries to help people buy Xanax and Percocet online and various other medicines thus, have been successful in delivering medicines at their doorsteps”. Evidently, given that the composition of the disputed domain name carries a risk of implied affiliation to the Complainant, the prior use of the disputed domain name further reinforces the notion that the Respondent sought to mislead unsuspecting Internet users as to the affiliation or ownership of the disputed domain name by the Complainant. Therefore, the Respondent cannot be said to have rights or legitimate interests in the disputed domain name nor can such use constitute a *bona fide* offering of goods or services.

In the absence of a Response, the Respondent has not rebutted such *prima facie* case.

The Panel, thus, finds for the Complainant under the second element of the Policy.

C. Registered and Used in Bad Faith

In view of the circumstances of this case, the facts outlined in sections A and B above can also evidence the Respondent’s bad faith in the registration and use of the disputed domain name.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant, and the Panel accepts that the disputed domain name may be intended to capitalize on the fame and goodwill of the Complainant’s trademarks. The fact that the disputed domain name initially resolved to a website offering for sale prescription medications while seemingly impersonating the Complainant supports a finding of bad faith in these circumstances.

In addition to the above, the current passive holding of the disputed domain name is also evidence of bad faith from the Respondent. Previous UDRP panels have found that the apparent lack of so-called active use of the domain name without any active attempt to sell or to contact the trademark holder does not prevent a finding of bad faith. See, e.g., *Redcats S.A. And La Redoute S.A. v. Tumay Aseña*, WIPO Case No. [D2001-0859](#); see also *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#). Given the prior use of the disputed domain name, the Respondent’s evident attempt to impersonate the Complainant in both the disputed domain name’s composition and website content, the implausible nature of any good faith use of the disputed domain name by the Respondent, and the Respondent’s use of a privacy service to mask its details on the publicly-available WhoIs, the totality of the circumstances support a finding of bad faith regardless of the current passive holding of the disputed domain name. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain name and that the Respondent registered and used the disputed domain name in bad faith.

The Panel finds that the Complainant has also proved the third element 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, <cvspharmacyway.com>, be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: March 1, 2023