

ADMINISTRATIVE PANEL DECISION

Sanofi v. Enrique Raul, Fentanyl
Case No. D2023-1644

1. The Parties

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

The Respondent is Enrique Raul, Fentanyl, United States of America.

2. The Domain Name and Registrar

The disputed domain name <acheter-ambienpresdemoi.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 15, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on May 19, 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 French pharmaceutical company that is ranked the fourth largest multinational pharmaceutical company in the world. The Complainant produces a drug for the treatment of insomnia under the trademark AMBIEN. The Complainant owns the following trademark registrations for AMBIEN:

- French registration No. 93456039 registered on February 19, 1993;
- International registration No. 605762 registered on August 10, 1993;
- United States registration No. 74345754 registered on December 7, 1993.

The Respondent registered the disputed domain name on January 13, 2023. The disputed domain name resolves to a website which offers chemicals and particularly a stimulant drug.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name incorporates the Complainant's trademarks and domain names in their entirety. The trademark of the Complainant has no dictionary meaning and is highly distinctive as a result. The reproduction of the Complainant's trademarks and domain names is the central, distinctive and dominant part of the disputed domain name. The addition of the words "acheter" and "presdemoi" does not distinguish the disputed domain name from the Complainant's trademark. Instead, it leads to an assumption that the disputed domain name is the Complainant's website for selling goods online. The goodwill and notoriety of the Complainant's trademarks should be taken into consideration.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The trademark AMBIEN is distinctive and the Respondent's name bears no resemblance to the Complainant's trademark. The Respondent is not authorized by the Complainant to use its trademark nor is it licensed by the Complainant. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods as it resolves to a website selling stimulants. The Respondent is using the Complainant's trademark and domain name in order to confuse Internet users into believing the Respondent is linked to the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. This is a case of opportunistic bad faith as the Complainant's trademarks are well-known. The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent must have known of the Complainant's trademark as it is famous and distinctive. The disputed domain name was registered and is being used to attract Internet traffic by creating a likelihood of confusion with the Complainant's trademark AMBIEN and domain names. There is an intention to disrupt the Complainant's business. The disputed domain name has been registered solely for the purpose of diverting consumers into thinking that the Respondent is connected or sponsored or affiliated with the Complainant or endorsed by it. The Respondent represents itself as a research laboratory while the products offered look like drug substitutes.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the trademark AMBIEN. The Panel is satisfied that the Complainant has established its ownership of the trademark AMBIEN. The disputed domain name incorporates the Complainant's trademark AMBIEN in its entirety. It is established by prior UDRP panels that when a domain name incorporates a complainant's registered trademark, such incorporation is sufficient to establish identity or confusing similarity for the purposes of the Policy even if other terms are added as part of the disputed domain name. *E.g., Oki Data Americas, Inc v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*").

The addition of the words "acheter" and "presdemoi" does not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademark. The gTLD ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its trademark. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Panel finds it necessary to assess whether there is a *bona fide* offering of goods or services as the disputed domain name resolves to a website through which certain powders are being advertised and particularly a stimulant. In this respect, the Panel notes a prior UDRP decision which explains that "The use of a domain name which is identical or confusingly similar to the Complainant's trademark with an intention of deriving advantage from user confusion and diverting Internet users to other commercial sites does not confer legitimate rights on the Respondent". See *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). The Panel explains under element three below how the Respondent is attempting to create confusion in order to divert Internet users to its site in order to sell its products, and such use cannot give rise to rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have known about the Complainant's business and trademark for the following reasons: 1. The Complainant's trademark AMBIEN is considered well-known by prior UDRP decisions (See *e.g. Sanofi-Aventis v. Davie Kearney*, WIPO Case No. [D2006-0861](#)). 2. The disputed domain name resolves to a website offering drugs. Although not identical to the Complainant's product sold under the brand AMBIEN, these drugs do fall within the pharmaceutical field, which is the Complainant's field. 3. The disputed domain name reproduces the Complainant's trademark AMBIEN in its entirety adding "acheter", which means "buy" and "presdemoi", which means "nearby". As such it creates the impression that it is the website of the Complainant for purchasing its products.

The Panel finds that more likely than not that the Respondent registered the disputed domain name with the intention of taking unfair advantage of the Complainant's goodwill attaching to the trademark AMBIEN in

order to create confusion in the minds of consumers for the purpose of attracting Internet traffic for commercial gain.

Such conduct falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, and accordingly, the Panel finds that the Complainant has satisfied 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, <acheter-ambienpresdemoi.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: June 1, 2023