

ADMINISTRATIVE PANEL DECISION

TopRx, LLC v. Michael Svetlov
Case No. D2023-1910

1. The Parties

The Complainant is TopRx, LLC, United States of America (“US”), represented by Bass, Berry & Sims PLC, US.

The Respondent is Michael Svetlov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <top-rx-market.com> is registered with GKG.NET, INC (formerly GK Group LLC) (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 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 (GKG.NET Domain Proxy Service Administrator) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 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 May 17, 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 May 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2023.

The Center appointed David Stone as the sole panelist in this matter on June 26, 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 US-based business with a long-standing reputation in the pharmaceutical field. The Complainant operates as a national distributor focused on generic pharmaceuticals and is a National Association of Boards Pharmacy (“NABP”) Accredited Drug Distributor. The Complainant has operated since 1988, with sales of more than USD 200 million annually.

The Complainant owns numerous trade marks, including the following (the Marks):

- TOP RX : US registration number 2812886, registered on February 10, 2004 in international class 35;
- **TopRx** : US registration number 5176060, registered on April 4, 2017 in international class 35.

In addition, the Complainant is the owner of the <toprx.com> domain name.

The disputed domain name was registered on February 11, 2020. According to the evidence in the Complaint, the disputed domain name resolves to a website advertising pharmaceutical products similar to those sold through the Complainant’s services.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Marks. Disregarding the Top-Level domain (“TLD”), “.com”, the disputed domain name differs from the Marks only in the addition of a hyphen between “top” and “rx” and the descriptive term “market”. These additions do not substantively distinguish the disputed domain name from the Marks, rather creating the overall impression that the disputed domain name is an official domain name of the Complainant or is otherwise affiliated with the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant, and the Complainant has not given the Respondent permission or license to use the Marks in any way. The Complainant believes that the Respondent has attempted to exploit the Complainant’s reputation and goodwill by selecting a domain name almost identical to the Complainant’s and using it to redirect and confuse customers seeking information about the Complainant’s products. The Complainant submits that various online review sites have alerted customers to the likelihood that the disputed domain name is a fraudulent pharmaceutical business and that the website is lacking in provisions compliant with applicable privacy laws. The false and misleading association between the Respondent’s website and the Complainant is therefore damaging to the Complainant’s business and reputation, and cannot confer rights or legitimate interests.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. As the disputed domain name is almost identical to the text of the Marks, the Respondent must have known of the Complainant’s brand and business, particularly given that the Marks have been in use for over 30 years prior to the Respondent’s recent registration of the disputed domain name. The Complainant contends that, at the very least, the Respondent had constructive knowledge of the Complainant’s widely known Marks and, even if the Respondent did not have actual knowledge, the Respondent would have

become aware of the Marks by conducting a simple web search for “TopRx” on the Internet. Finally, the Complainant contends that the Respondent’s registration of the disputed domain name through a privacy service further evidences bad faith. The Complainant therefore submits that the Respondent has registered and used the disputed domain name knowingly and in bad faith for commercial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainant must prove in order to succeed:

- (i) that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (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

On the evidence provided by the Complainant, the Panel is satisfied that the Complainant has rights in the Marks. In assessing the similarity between the disputed domain name and the Marks, it is permissible to ignore the Top-Level Domain (“TLD”). The disputed domain name then comprises the entire text of the Marks in addition to a hyphen and the term “market”. Where a trade mark is recognisable within a disputed domain name, the additional presence of a descriptive term does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8). Neither the presence of the term “market” nor the addition of a hyphen suffices to distinguish the disputed domain name from the Marks (*Forest Laboratories, Inc. v. Whois Privacy Protection Service, Inc.*, WIPO Case No. [D2007-1050](#); *Lilly ICOS LLC v. John Hopking / Neo net Ltd.*, WIPO Case No. [D2005-0694](#)). The Panel therefore finds that the disputed domain name is confusingly similar to the Marks, and concludes that the condition in paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the criteria that determine whether a domain name registrant has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business or other organisation) has been commonly known by the disputed domain name, even if the respondent has acquired no trade mark or service mark rights; or
- (iii) 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 trade mark or service mark at issue.

The Complainant makes out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent has provided no evidence to contradict it.

On the facts and contentions before the Panel, the Respondent is not commonly known by the disputed domain name and is not authorised to use the Marks. The evidence provided by the Complainant satisfies the Panel that the Respondent uses its website to offer services similar to the Complainant's services. The Respondent has provided no evidence of having any license from the Complainant to use the Marks in this way, nor of having ever requested permission to identify itself using the Complainant's Marks (*The Governor and Company of Adventurers of England Trading into Hudson's Bay AKA Hudson's Bay Company v. Domain Administrator*, See PrivacyGuardian.org, WIPO Case No. [D2020-0053](#) (March 10, 2020)).

The Panel finds that, at a minimum, the Respondent is exploiting the confusing similarity between the disputed domain name and the Marks to divert Internet users searching for the Complainant's products and to deceive those users as to the origin of the advertised products. Such capitalisation on the Complainant's goodwill cannot constitute *bona fide* or legitimate noncommercial fair use of the disputed domain name (satisfying paragraphs 4(c)(i) and 4(c)(iii) of the Policy). The condition in paragraph 4(a)(ii) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out the non-exhaustive criteria for bad faith. Generally, for the purposes of the Policy, bad faith constitutes registration and use of a domain name in order to:

- (i) sell, rent or transfer the domain name to the trade mark owner (or a competitor thereof) for a profit;
- (ii) prevent the trade mark owner from registering its trade mark in a domain name, provided that the respondent is engaged in a pattern of such conduct;
- (iii) disrupt the business of a competitor; or
- (iv) divert Internet traffic for commercial gain.

As discussed above, the Complainant has provided unchallenged evidence that the Respondent is using the disputed domain name to redirect Internet users to sites advertising pharmaceutical products similar to those sold through the Complainant's services. The Respondent has provided no explanation of its behaviour, and so the Panel concludes that the Respondent registered the disputed domain name in bad faith to create a false and misleading impression of association between the disputed domain name and the Complainant. This constitutes bad faith and is not a legitimate business use by the Respondent (*Starwood Hotels & Resorts Worldwide, Inc., Sheraton LLC, Sheraton International Inc. v. Isaac Isaac*, WIPO Case No. [D2011-1275](#) (September 9, 2011)). It can be inferred that the Respondent knew or at least had constructive knowledge of the Complainant's business and the well-known Marks (*Perkins Holdings Limited v. Domain Admin / Private Registrations Aktien Gesellschaft*, WIPO Case No. [D2011-1825](#) (December 28, 2011)). The Respondent's use of a privacy service to register the disputed domain name supports this contention (*WSFS Financial Corporation v. Private Registrations Aktien Gesellschaft 2*, WIPO Case No. [D2012-0033](#) (February 20, 2012)).

The Panel therefore concludes that the Respondent is using the disputed domain name to divert Internet users for commercial gain, which falls squarely within paragraph 4(b)(iv) of the Policy. The condition in paragraph 4(a)(iii) of the Policy is therefore satisfied.

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, <top-rx-market.com>, be transferred to the Complainant.

/David Stone/

David Stone

Sole Panelist

Date: July 10, 2023