

ADMINISTRATIVE PANEL DECISION

Mylan, Inc. v. Olympic Ophthalmics, Inc.
Case No. D2023-2029

1. The Parties

The Complainant is Mylan, Inc., United States of America (“United States”), represented by The Webb Law Firm, United States.

The Respondent is Olympic Ophthalmics, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <viatrisdryeye.com> (hereinafter “Disputed Domain Name”) is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 10, 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 (PERFECT PRIVACY LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 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 May 20, 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 July 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 26, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on August 1, 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

Viartis Inc. is an American global pharmaceutical and healthcare corporation. It was formed through the merger of Complainant Mylan and the Upjohn Company in 2020. The details of the merger are not discussed in the Complaint, but the submitted evidence confirms Complainant's allegation it owns all, right, title and interest in many trademark registrations throughout the world for VIATRIS or derivative marks, including United States Trademark Registration No. 6,149,437 for VIATRIS (registered September 8, 2020). (Hereinafter the "Mark").

Respondent registered the Disputed Domain Name on March 2, 2023. On the associated webpage, Respondent promotes its ITEAR100 product, which is a "handheld medical device [that] uses focused oscillatory energy to activate the external nasal nerve and stimulate natural tear production without the need for eyedrops, medication, or lubricants". Respondent positions its ITEAR100 product as a competitor to medications: "Unlike competitor products such as Tyrvaya . . . , which rely solely on the use of eye drops and medication, iTear100 delivers results fast in only 15 seconds without the need for any drops or lubricants." Complainant alleges that TYRVAYA "is an eye drop product that is owned by one of the family of companies related to Mylan and Viartis".¹

5. Parties' Contentions

A. Complainant

Complainant contends that the Disputed Domain Name includes the entire Mark and that Respondent does not avoid confusion by adding the additional terms "dry eye".

Complainant also contends that Respondent has no rights or legitimate interests with respect to the Disputed Domain Name. Complainant asserts that it never authorized Respondent to use the Mark and that Respondent is not commonly known by the Mark.

Finally, Complainant contends that Respondent had knowledge of Complainant's rights to the VIATRIS trademark and, accordingly, that Respondent registered the Disputed Domain Name in bad faith. Complainant also contends that Respondent has used in Disputed Domain Name in bad faith by intentionally attempting to attract, for commercial gain, Internet users to Respondent's web site by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site and its ITEAR100 product.

B. Respondent

The Respondent did not submit a response to the complaint.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the VIATRIS trademark, as evidenced by its multiple trademark registrations including United States Trademark Registration No. 6,149,437. The Panel also finds

¹ The Panel's research indicates that Oyster Point Pharma, Inc. obtained FDA approval for Tyrvaya in 2021. Viartis acquired Oyster Point in January 2023.

that the Disputed Domain Name is confusingly similar to Complainant's trademark as it includes the VIATRIS trademark in its entirety. Because the Complainant's entire Mark is recognizable within the Disputed Domain Name, Complainant has standing to pursue this action. The addition of "dryeye" does not dispel the confusing similarity or undermine Complainant's standing. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

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

B. Rights or Legitimate Interests

The Panel finds that Respondent does not have rights or a legitimate interest in the Disputed Domain Name.

Complainant has presented a *prima facie* case for Respondent's lack of rights or legitimate interests in the Disputed Domain Name, which Respondent has not rebutted. Complainant has not authorized Respondent to use its trademark. Respondent also has not answered this Complaint and there is no evidence or reason to suggest Respondent is, in fact, commonly known by the Disputed Domain Name or that Respondent is using the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

"[W]here a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element." [WIPO Overview 3.0](#), section 2.1.

On the website associated with the Disputed Domain Name, Respondent promotes its ITEAR100 product that, "[u]nlike competitor products such as Tyrvaya . . . ,” purports to stimulate “natural tear production” and thereby give dry eye relief. Complainant asserts that TYRVANA is “an eye drop product that is owned by one of the family of companies related to Mylan and Viatris”.

Respondent is using the VIATRIS trademark embedded in the Disputed Domain Name to attract Internet users to a site where it promotes a product that competes with a product offered by a company related to Complainant. This is not a legitimate use. See, e.g., *Ruff GmbH v. Private Registrations Aktien Gesellschaft*, WIPO Case No. [D2010-0434](#) (“It is well established that this type of use of a domain name, which in effect trades off the Complainant's reputation and trademark, offering competing goods and services, is not bona fide and it is clear to the Panel that the Respondent's use of the disputed domain name in this manner cannot confer any rights or legitimate interests upon it . . .”)

The Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent registered and is using the Disputed Domain Name in bad faith.

Panel finds, based on a preponderance of the evidence, that Respondent registered the Disputed Domain Name in bad faith. Respondent was likely aware of Complainant's rights when it registered the Disputed Domain Name in bad faith with no plausible good faith purpose. The coined word “viatris” has no meaning except as a trademark.² Given this, the Panel finds that Respondent was likely aware of Complainant and its

² Complainant coined the Mark by combining the Latin words “via,” meaning path, and tris, which means three. Together the coined word is meant to convey the path to the companies three main objectives: expanding access to medicine, meeting patient needs through innovation and earning the trust of the healthcare community. “Viatris picked as new name for a merged Mylan/Upjohn”. *Pittsburgh Post-Gazette*. November 12, 2019.

trademark rights when it registered the Disputed Domain Name.

The Panel also finds that Respondent used the Disputed Domain Name in bad faith. Respondent meant to exploit Complainant's goodwill and by using the Disputed Domain Name, Respondent "intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of" Respondent's web site and its ITEAR100 product. Policy paragraph 4(b)(iv).

The Panel finds that 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 <viatrisdryeye.com> be transferred to the Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: August 10, 2023