

ADMINISTRATIVE PANEL DECISION

Apsen Farmacêutica S.A. v. Namase Patel, Mumbai Domains
Case No. D2024-0978

1. The Parties

The Complainant is Apsen Farmacêutica S.A., Brazil, represented by Silveiro Advogados, Brazil.

The Respondent is Namase Patel, Mumbai Domains, India.

2. The Domain Name and Registrar

The disputed domain name <apsen.com> is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 5, 2024. On March 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 2024, 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 (SEA WASP, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 11, 2024, 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 March 15, 2024. On March 18, 2024, the Center sent a new communication to the Complainant indicating a formal deficiency in the amended Complaint and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed a new amended Complaint on March 20, 2024.

The Center verified that the Complaint together with 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 March 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 11, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on April 12, 2024. 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 pharmaceutical company with its registered seat in Brazil. The roots of the Complainant date back to the year 1969.

Besides the use as a company name, the Complainant owns some trademark registrations for APSEN, including but not limited to the Brazilian Trademark Registration Nr. 810943174, registered on April 24, 1984, for APSEN, covering protection for various pharmaceutical products as protected in class 5 (Annex 5 to the Complaint).

The Complainant further operates its official website at "www.apsen.com.br" (Annex 6 to the Complaint).

The Respondent is reportedly located in India.

The disputed domain name was registered on July 12, 2003.

According to the case record, the disputed domain name resolves to a landing page with pay-per-click ("PPC") links in Portuguese language to third party websites with pharmaceutical and related products (Annex 7 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark 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 and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

Before discussing the three elements under paragraph 4(a) of the Policy, the Panel notes that the Complaint was filed around 21 years after the registration of the disputed domain name. However, UDRP panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. [WIPO Overview 3.0](#), section 4.17. In view of the Panel, this particularly applies in the present case, in which the Respondent (in the absence of a response) did not provide any indication that the Complainant has delayed its Complaint in a legally abusive manner.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the APSEN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the APSEN mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is particular no indication in the case file that the Respondent is commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish the Respondent's rights or legitimate interests therein. Rather, the disputed domain name resolves to a landing page featuring PPC links in Portuguese language to products which relate to the Complainant's field of activity. Such use cannot establish rights or legitimate interests. [WIPO Overview 3.0](#), section 2.9.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that Respondent more likely than not had the Complainant and its APSEN trademark in mind when registering the disputed domain name. Given the Complainant's long-established use of the identical trademark, as well as the <apsen.com.br> domain name from which the disputed domain name only differs by omitting the country code Top-Level Domain ".br", it seems that the Respondent has deliberately chosen the disputed domain name to target the Complainant and mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel notes that the Complainant has provided evidence that the disputed domain name resolves to a landing page with PPC links in Portuguese language to products confusingly similar to the Complainant's pharmaceutical products. The use of the disputed domain name to resolve to a landing page with pharmaceutical related PPC links to third party websites, in the present circumstances, is an indication that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of this website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Also, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith use. The Respondent further appears to have furnished incomplete or false contact details for purposes of registration of the disputed domain name, seeing how the courier was unable to deliver the Center's written communication, which additionally supports a finding of bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established 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 <apsen.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: April 25, 2024