

## **ADMINISTRATIVE PANEL DECISION**

Sanofi and Sanofi Biotechnology v. Super Privacy Service LTD c/o Dynadot /  
yanlu lu

Case No. D2022-2164

### **1. The Parties**

The Complainants are Sanofi, France (“First Complainant”), and Sanofi Biotechnology, France (“Second Complainant”), represented by Selarl Marchais & Associés, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America (“United States”) / yanlu lu, China.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 16, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 2022, 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 June 16, 2022.

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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 8, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 18, 2022. 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 First Complainant is the fourth largest pharmaceutical company by prescription sales in the world. Its consolidated net sales in 2021 amounted to EUR 37.7 billion. The company has affiliates in 100 countries on five continents employing 100,000 people. One of its pharmaceutical products is a drug indicated for the treatment of adult patients with inadequately controlled moderate-to-severe atopic dermatitis, which the company markets under its trademark DUPIXENT.

The Second Complainant is a subsidiary of the First Complainant.

The Second Complainant is the owner of the following trademark registrations for the sign “DUPIXENT” (the “DUPIXENT trademark”):

- the International trademark DUPIXENT with registration No.1278059, registered on October 28, 2015 for the goods in International Class 5, designating among others China, where the Respondent is reportedly located at;
- the European Union trademark DUPIXENT with registration No. 014683916, registered on January 28, 2016 for the goods in International Class 5; and
- the United States trademark DUPIXENT with registration No. 4978127, registered on June 14, 2016 for the goods in International Class 5.

The Complainant is also the owner of the domain name <dupixent.com>, registered on May 29, 2015.

The disputed domain name was registered on May 30, 2022. It resolves to a pornographic and gambling website.

#### **5. Parties' Contentions**

##### **A. Complainants**

According to the Complainants, the disputed domain name is confusingly similar to their DUPIXENT trademark, which does not have any particular meaning and is distinctive. The disputed domain name imitates and is a deliberate misspelling of this trademark, as in it the letter “e” is replaced by the letter “r”, these two letters being placed next to each other on Latin keyboards. This substitution is insignificant from a phonetic and typographical point of view and represents an example of typosquatting. It does not change the overall impression produced by the disputed domain name and is insufficient to avoid confusion with the Complainants' trademark.

The Complainants submit that the Respondent does not have rights or legitimate interests in the disputed domain name, because it is not commonly known under it and the Complainant has not authorized the Respondent to use the DUPIXENT trademark or to register a domain name corresponding to it. The Complainants point out that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and is not using it in connection with a *bona fide* offering of goods or services. Rather, the disputed domain name resolves to a gambling and pornographic website and contains sponsored links and advertising banners related to such content, so the Respondent uses it for commercial gain and tarnishes the goodwill of the Complainants.

The Complainants contend that the disputed domain name was registered and is being used in bad faith. According to them, given the distinctive nature of the DUPIXENT trademark and the worldwide reputation of the Complainants, the Respondent is likely to have had notice as to the existence of this trademark at the time it registered the disputed domain name. Therefore, the Respondent acted with opportunistic bad faith in registering the disputed domain name for the purpose of attracting Internet users to the Respondent's website by creating a likelihood of confusion between the DUPIXENT trademark and the disputed domain name. The disputed domain name resolves to a gambling and pornographic website and has been registered only to attract Internet users to click on the links and to access pornographic, game and gambling contents, so the Respondent is using it to divert and attract Internet users to its website in order to take benefit from the Complainant's reputation for financial gain.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural issue - Consolidation of Complainants**

The two Complainants have jointly filed the Complaint against the Respondent. They submit that they are affiliates and that the Second Complainant is the owner of the DUPIXENT trademark. The Respondent has made no comments on this issue.

The Panel is satisfied that a consolidation of the two Complainants in a single proceeding against the Respondent in respect of the disputed domain name is justified and would be appropriate in the circumstances.

As summarized in section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in assessing whether a complaint filed by multiple complainants may be brought against a single respondent, UDRP panels look at whether the complainants have a specific common grievance against the respondent or the respondent has engaged in a common conduct that has affected the complainants in a similar fashion, and whether it would be equitable and procedurally efficient to permit the consolidation. Prior UDRP panels have held that a "specific common grievance" is shown where the complainants have a common legal interest in the trademark rights on which the complaint is based or have been the target of common conduct by the respondent, which has clearly affected their individual legal interests in a similar fashion.

The prerequisites for consolidation appear to be present in the case at hand. The Complainants have submitted evidence that the Second Complainant holds registered trademark rights in the DUPIXENT trademark and submit that they are affiliates. The two of them share the same address and are represented by the same counsel in this proceeding. The conduct they allege that the Respondent has engaged into may affect, if present, the rights and legitimate interests of each of them. Neither of the Parties has made the Panel aware of any reason why a consolidation of the proceeding would not be equitable or procedurally inefficient.

In view of the above, the Panel decides to allow the consolidation of the two Complainants in a single proceeding against the Respondent in respect of the disputed domain name.

### **6.2. Substantive issues**

Pursuant to the Policy, paragraph 4(a), the Complainants must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”.

The Respondent has however not submitted a Response.

### **A. Identical or Confusingly Similar**

The Complainants have jointly filed the Complaint and provide evidence that the Second Complainant is the owner of the DUPIXENT trademark. They submit that the two of them are affiliates as evident from the presence of the element “Sanofi” in their names. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner’s affiliate is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. In view of this, the Panel accepts that the Complainants have rights in the DUPIXENT trademark for the purposes of the Policy and have standing to jointly file the Complaint.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level-Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence “dupixrnt”, which reproduces the DUPIXENT trademark with the substitution of the letter “e” by the letter “r”. Since these two letters are indeed adjacent on Latin keyboards, and in the absence of any allegation by the Respondent to the contrary, this element of the disputed domain name appears as more likely an intentional misspelling of the DUPIXENT trademark or a typosquatted version of it. As discussed in section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Examples of such typos include, *inter alia*, adjacent keyboard letters.

In view of the above, the Panel finds that the disputed domain name is confusing similar to the DUPIXENT trademark in which the Complainants have rights.

### **B. Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name, stating that there is no relationship between the Parties, and the Complainants have not authorized the Respondent to use the DUPIXENT trademark or to register a domain name incorporating it. The Complainants submit that the Respondent's website contains pornographic, game and gaming content and links. The Complainants have thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent does not dispute the contentions of the Complainants and does not allege having rights or legitimate interests in the disputed domain name. It has not provided any plausible explanation for its choice and registration of the disputed domain name.

As discussed in section 6.2.A above, the disputed domain name appears as a typosquatted version of the DUPIXENT trademark and the evidence in the case file shows that it indeed resolves to a website that includes pornographic content. As noted by the Complainants, this use of the disputed domain name may negatively affect their reputation. The Panel does not regard this conduct of the Respondent as legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the disputed domain name is confusingly similar to the Complainants' DUPIXENT trademark and represents a typosquatting version of it. Moreover, the disputed domain name is being used for a website offering pornographic content and featuring links to other pornographic websites.

In view of the above, the Panel accepts as more likely than not that the Respondent has registered the disputed domain name targeting the DUPIXENT trademark, and by using it, it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants' DUPIXENT trademark as to the affiliation or endorsement of the Respondent's website or of the content offered on it. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith.

## 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 <dupixrnt.com> be transferred to the Complainants.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: July 20, 2022