

ADMINISTRATIVE PANEL DECISION

STADA Arzneimittel AG and STADA PHARMA CZ s.r.o. and STADA PHARMA Slovakia, s.r.o. v. Andreas Brandl, Neckermann Neue Energien AG
Case No. D2022-3809

1. The Parties

The Complainant is STADA Arzneimittel AG, Germany (the “First Complainant”), STADA PHARMA CZ s.r.o., Czech Republic (the “Second Complainant”), STADA PHARMA Slovakia, s.r.o., Slovakia (the “Third Complainant”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America.

The Respondent is Andreas Brandl, Neckermann Neue Energien AG, Germany.

2. The Domain Name and Registrar

The disputed domain name <stada-pharma.com> is registered with united-domains AG (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 13, 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 (Domain Admin, united-domains Reselling GmbH). The Center sent an email communication to the Complainant on October 17, 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 October 18, 2022. On October 17, 2022, the Center transmitted an email in English and German to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on October 18, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and German of the Complaint, and the proceedings commenced on October 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 15, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on November 25, 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 a widely known pharmaceuticals manufacturer based in Germany with roots dating back to the year 1895. The Second and Third Complainant are affiliated companies from the Czech Republic and Slovakia.

The First Complainant is the proprietor of a large number of longstanding trademark registrations in numerous jurisdictions for its STADA word mark, including the German Trademark No. 656708, registered on April 27, 1954, for goods in class 5; the International Trademark No. 562225, registered on December 7, 1990, for goods in class 5; and the European Union Trademark No. 013236691, registered on September 5, 2015, for goods in class 3, 5, 10, and 16, and for services in class 35, 41, and 44 (Annex 8 to the Complaint).

The First Complainant is further the owner of the STADAPHARM word mark, which is *inter alia* registered as the German Trademark No. 1053013, registered on August 29, 1983, for goods in classes 3 and 5, and the European Union Trademark No. 018295446, registered on January 9, 2021, for goods and services in classes 3, 5, 10, 35, and 44 (Annex 9 to the Complaint).

The First Complainant is also the registrant of numerous domain names containing its STADA and STADAPHARM marks, including <stada.com>, <stada.de>, and <stadapharm.com>.

The Respondent is reportedly an individual from Germany, allegedly representing a German entity.

The disputed domain name was registered on February 9, 2021.

It does not resolve to an active website but the online console associated with the disputed domain name provides links for "webmail" and "account-administration" (Annex 6 to the Complaint). In addition, the Respondent has configured MX records for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 7 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name to the First Complainant.

The Complainant is of the opinion that the disputed domain name is confusingly similar to the registered STADA and STADAPHARM trademarks of the First Complainant. Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation of Multiple Complainants

The Complaint contains a request for consolidation of the First Complainant, the Second Complainant, and the Third Complainant on the basis that they are related companies with a common grievance against the Respondent.

Taking into consideration that the Respondent has not rebutted the requested consolidation, the Panel finds that the First Complainant, the Second Complainant, and Third Complainant have established a *prima facie* case that the Complaint can be consolidated based on a common grievance and interest of all three Complainants, in particular as all three Complainants are affiliated companies and are affected in their company name and trademark rights by the disputed domain name. The Panel is convinced that it is fair and equitable in the circumstances of the case to order the consolidation as requested (see section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

Consequently, the Panel accepts the consolidation request in this administrative proceeding and, for the ease of reference, refers to the First Complainant, the Second Complainant, and the Third Complainant as “the Complainant” in the Decision, whenever appropriate.

6.2. Language of the Proceeding

The Panel determines in accordance with the Complainant’s request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is German, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in German and request a German translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center’s communication about the language of the proceedings, even though communicated in German and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in German and that this opportunity remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.3. Substantive Issues

According to paragraph 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 formally replied to the Complaint. See *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. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

For the evaluation of this case, the Panel has further taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in STADA and STADAPHARM.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks, as it is fully incorporating the Complainant's STADA trademark and is almost identical to its STADAPHARM trademark.

As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The addition of the term "pharma" respectively the letter "a" does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's STADA and STADAPHARM trademarks. See also section 4.13 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's trademarks within the disputed domain name.

Further, the Panel finds that the disputed domain name, which is confusingly similar to the Complainant's STADA and STADAPHARM trademarks, carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). The disputed domain name incorporates the STADA trademark in its entirety together with the term "pharma", which is related to the Complainant's business. Moreover, the disputed domain name also incorporates the STADAPHARM trademark in its entirety and adds the letter "a". In the present case, the Panel finds that there is a risk that Internet users will not notice the addition of this letter to the STADAPHARM trademark.

In the absence of a Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name. Taking into consideration the undisputed screenshots as provided by the Complainant in Annex 6 to the Complaint, the Panel does not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Hence, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name according to the Policy, paragraph 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademarks in mind when registering the disputed domain name. The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users and/or to freeride on the goodwill of the Complainant's STADA and STADAPHARM trademarks, likely for commercial gain and/or to disrupt the Complainant's business. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

Furthermore, the Panel finds that the Respondent is using the disputed domain name in bad faith, even though the disputed domain name is linked to a general landing page only (Annex 6 to the Complaint). In line with the opinion of numerous UDRP panels before (*cf. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the non-use of a domain name does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel assesses the Complainant's trademarks STADA and STADAPHARM as sufficiently distinctive, so that any good-faith use of the Complainant's trademarks in the disputed domain name by the Respondent appears to be unlikely. Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. Also, the Panel believes that the activated MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name, even if not associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, possibly for fraudulent activities.

All in all, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain name that would be in good faith, except with an authorization of the Complainant.

Taking all facts of the case into consideration, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 <stada-pharma.com> be transferred to the First Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: December 9, 2022