

ADMINISTRATIVE PANEL DECISION

Septodont ou Septodont Sas ou Specialites Septodont v. noname
Case No. D2022-4948

1. The Parties

The Complainant is Septodont ou Septodont Sas ou Specialites Septodont, France, represented by Novagraaf France SA, France.

The Respondent is noname, France.

2. The Domain Name and Registrar

The disputed domain name <fr-septodont.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 28, 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 amended Complaint on January 2, 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 January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 25, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on February 2, 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 company established in 1955 and named Septodont ou Septodont SAS ou Spécialités Septodont.

According to the information mentioned in the companies registry, it is active in the pharmaceutical industry.

The Complainant is notably the owner of the SEPTODONT French trademark registration No. 1516776, filed on February 28, 1989, regularly renewed since then and designating products of class 5.

The disputed domain name, <fr-septodont.com>, was registered on November 22, 2022.

Initially, it resolved to a parking page of the Registrar and several MX records were set up on it.

At the time of the drafting of the decision, it is inactive.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name, and its arguments can be summarized as follows:

First, the Complainant submits that the disputed domain name is confusingly similar to its trademark because the latter is identically reproduced within the disputed domain name and remains recognizable.

Then, the Complainant claims that the Respondent has no rights or legitimate interests in respect with the disputed domain name because: i) said disputed domain name is not related to any prior trademark or business name owned by the Respondent, ii) the Respondent is not related to the Complainant, iii) the Respondent is not authorized by the Complainant to use the SEPTODONT trademark, and iv) the Respondent "clearly registered [the disputed] domain name while being aware of the infringement that he was going to bring to the applicant's rights. He could not ignore the existence of the company SEPTODONT, which enjoys an important reputation in the dental field (...)".

Regarding the third element (registration and use of the disputed domain name in bad faith), the Complainant's arguments are as follows:

"The domain name <sepotdont.com> has been registered in bad faith.

Several mail servers are configured on the disputed domain name (Annex 5) despite the fact that the website is inactive. It is possible that the registrant has created an email addresses in order to send fraudulent emails to customers, services providers, suppliers, pretending to be the Complainant to collect personal data, or to place orders in the name of the company or share information's about her.

Upon reservation, the respondent, who, to the best of the Complainant's knowledge, had no legitimate reasons to choose the denomination 'sepotdont' for his domain name, could not be unaware of the existence of the Complainant's trademarks and company name SEPTODONT.

At this time, the disputed name is still reserved and inactive (Screenshot from 'www.fr-septodont.com' – Annex 6). According to the administrative panel decision *Robertet SA v. Marie Claude Holler*, 'passive holding of a domain name can also be an evidence of bad faith use' (*Robertet SA v. Marie Claude Holler*, WIPO Case No. [D2018-1878](#)).

Considering all the above, the passive holding of this domain name, the strong reputation that applies to the complainant rights all around the world and the concealing identity respondent's constitute evidences of bad faith reservation." [sic].

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

Besides, paragraph 15(a) of the Rules provides that "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraphs 10(b) and 10(d) of the Rules also provide that "[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "[t]he Panel shall determine the admissibility, relevance, materiality, and weight of the evidence".

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

Annex 4 of the Complaint shows trademark registrations for SEPTODONT in the name of the Complainant, in particular this detailed in Section 4 above.

Turning to whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, "[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark [...], the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

In the present case there is no difficulty in finding that that the disputed domain name is confusingly similar with the Complainant's trademark, since:

- the disputed domain name reproduces the SEPTODONT trademark in its entirety,
- the element "fr" of the disputed domain name (that may stand for the common abbreviation of France), does not prevent a finding of confusing similarity between the Complainant's trademark (which remains recognizable) and the disputed domain name. Indeed, there is a consensus view among UDRP panels (see [WIPO Overview 3.0](#), section 1.8) that a domain name reproducing a trademark with the mere addition of a geographic term, is confusingly similar to said trademark under the first element of the Policy,
- the generic Top-Level Domain ("gTLD") ".com" may be ignored for the purpose of assessing the confusing similarity, because it plays a technical function.

As a result of all the above, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made out, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see "[WIPO Overview 3.0](#)", section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its SEPTODONT trademark in domain name registration or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Furthermore, the disputed domain name is not used in relation with an active website and nothing in the case file suggests that the Respondent has made preparations to use it for legitimate purposes.

In view of all the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The burden of production now shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name.

The Respondent, which has not replied to the Complainant's contentions, has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Furthermore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Taking all the above into consideration, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names, and therefore that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain names in bad faith.

The circumstances listed in paragraph 4(b) of the Policy are only examples and therefore are not exhaustive of the situation of bad faith.

Registration in Bad Faith

First of all, this Panel has to underline that “the applicable standard of proof in UDRP cases is the ‘balance of probabilities’ or ‘preponderance of the evidence’ (...). Under this standard, a party should demonstrate to a panel’s satisfaction that it is more likely than not that a claimed fact is true. While conclusory statements unsupported by evidence will normally be insufficient to prove a party’s case, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent”. (See [“WIPO Overview 3.0”](#), section 4.2.).

In this case, even if most of the Complainant’s arguments intended to demonstrate the bad faith registration consist in mere conclusory statements, it nevertheless remains that:

- the disputed domain name reproduces the Complainant’s trademark in its entirety;
- this trademark predates the registration of the disputed domain names by dozens years;
- the Complainant’s trademark is a coined term;
- the “fr” element in the disputed domain name can refer to the country of origin of the Complainant, namely France;
- the Complainant originates from France and, when registering the disputed domain name, the Respondent has indicated being located in France;
- also when registering the disputed domain name, the Respondent totally concealed its identity, not only in using a privacy service, but also in providing an obvious inaccurate identity;
- the Respondent has not put forward any argument intended to establish its good faith.

In light of the above, the Panel finds that, on the balance of probabilities, the Respondent registered the disputed domain name with the Complainant’s trademark in mind, that is to say in bad faith.

Use in Bad Faith

The fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith use because the present situation clearly falls within the doctrine of passive holding.

Indeed, the disputed domain name reproduces the Complainant’s prior trademark, which is intrinsically distinctive. As a consequence, the disputed domain name exclusively and necessarily refers to the Complainant’s rights. Besides, as mentioned above, the Respondent has registered the disputed domain through a privacy service and in using an obvious inaccurate identity. Furthermore, the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use.

In such a context, any good faith use of the disputed domain name by the Respondent seems implausible (see [WIPO Overview 3.0](#), section 3.3).

The Panel is all the more convinced of this considering that the Respondent has set up not only one, but four MX Records for the disputed domain name, which enables it to use said disputed domain name to send and receive emails. The Panel is of the opinion that the mere act of configuring so many MX Records reveals a genuine intent to use the disputed domain name to exchange emails. Given i) the composition of the disputed domain name, in that it can impersonate the Complainant, ii) the clear absence of rights of the

Respondent, iii) the fact that the Respondent has concealed its identity through a privacy service and through the communication to the Registrar of an obvious inaccurate identity, and iv) the silence kept by the Respondent while invited to participate in the proceedings, such circumstances make extremely likely that the disputed domain name may be used for fraudulent activities, such as phishing schemes impersonating the Complainant.

In any case, in the above-described context, the detention of the disputed domain name in the hands of the Respondent at least represents an unbearable threat hanging over the head of the Complainant.

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of 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 <fr-septodont.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: February 15, 2023