

## **ADMINISTRATIVE PANEL DECISION**

Nutricia International B.V. v. Standley Rex, Standley Rex  
Case No. D2023-3345

### **1. The Parties**

The Complainant is Nutricia International B.V., Netherlands (Kingdom of the), represented by Eversheds Sutherland (France) LLP, France.

The Respondent is Standley Rex, Standley Rex, Spain.

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

The disputed domain name <aptamilsuppliers.com> is registered with <Wix.com> Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 7, 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 (Statutory Masking Enabled) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 8, 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 August 9, 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 August 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 11, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 20, 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**

According to information in the Complaint, the Complainant is a company incorporated under the laws of Netherlands (Kingdom of the), and a pioneer of early life nutrition as well as specialized medical nutrition. The Complainant is present in more than 100 countries across the world, with a portfolio of strong global and local brands, including the trademark APTAMIL, which is used throughout the world for infant foods, and has acquired considerable renown, consumer recognition, and goodwill at an international level.

The Complainant is the owner of various registered trademarks that include APTAMIL in various jurisdictions throughout the world, including the following:

- The International trademark registration No. 376506 for APTAMIL, registered as of February 2, 1971, duly renewed and covering goods in class 5;
- The European Union trademark registration No. 007203813 for APTAMIL, registered as of September 1, 2008, duly renewed and covering goods in classes 5, 29, 30 and 32.

The Complainant also owns and uses the domain name <aptamil.com> for its main website as well as other domain names including APTAMIL.

The disputed domain name was registered on January 11, 2023 and according to evidence with the Complaint, it resolves to a website fraudulently misrepresenting that the Respondent is “the leading exporter of APTAMIL products worldwide” and a “licensed distributor and wholesaler” of the Complainant. Whilst the website at the disputed domain name purports to allow Internet users to place orders online it does not and only contains a form designed to obtain personal data from Internet users. Most pages on the website at the disputed domain name are actually identical and do not correspond to the titles of the respective pages.

#### **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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant’s trademarks APTAMIL, which is incorporated in the disputed domain name in its entirety. The mere addition of the descriptive term “suppliers” is insufficient to distinguish the disputed domain name from the Complainant’s trademark.

As regards the second element, the Complainant contends, *inter alia*, that the Respondent is not affiliated with the Complainant in any way. It is not an authorized dealer, distributor, or licensee of the Complainant, nor has it been otherwise allowed by the Complainant to make any use of its APTAMIL trademarks or to seek registration of any domain name incorporating such trademarks. The Respondent deceptively misrepresents on the website at the disputed domain name that it is a leading distributor of the Complainant and that it is licensed by the Complainant: “GET IN CONTACT WITH THE BEST APTAMIL EXPORTERS WORLD WIDE FOR TIMELY DELIVERY AND QUALITY SERVICE. Reasons Why You Should Order Through Us - We Are Licensed Distributor & Wholesaler.” Whilst the website at the disputed domain name purports to allow Internet users to place orders online it does not and only contains a form designed to obtain personal data from Internet users. The Respondent’s use of the disputed domain name does not fulfil the

requirements in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), including the requirement that the site must accurately and prominently disclose the Respondent's relationship with the trademark holder.

With respect to the third element, the Complainant argues that its APTAMIL trademark is highly distinctive and well-known globally, and it is therefore inconceivable that the Respondent could have been unaware of the Complainant's trademark at the time of registration of the disputed domain name in 2023 given the fact that the Complainant had already registered and extensively used its APTAMIL trademarks throughout the world and acquired substantial renown and repute worldwide for decades. The choice of the term "suppliers" to add to the APTAMIL trademark in the disputed domain name blatantly demonstrates the intention of the Respondent to target the Complainant by causing confusion as to the affiliation of the disputed domain name with the Complainant's APTAMIL trademark, and more specifically the Aptamil infant products distributed by the Complainant. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website.

## **B. Respondent**

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

## **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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.

### **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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms here, "suppliers", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

As established by previous UDRP panels, it is sufficient for the complainant to make a *prima facie* case demonstrating that the respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has proved it holds rights over the trademark APTAMIL, and claims that the Respondent has no legitimate reason to register or acquire the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate non-commercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, while the website at the disputed domain name purports to allow Internet users to place orders online, according to unrebutted information in the Complaint, it does not, and only contains a form designed to obtain personal data from Internet users. It displays the Complainant's trademark APTAMIL as well as pictures of the Complainant's products with no disclaimer as to the relationship or lack thereof with the Complainant. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent's part.

There is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the unrebutted assertions of the Complainant, its APTAMIL trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar with the Complainant's trademark. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

The disputed domain name resolves to a web shop that purports to allow Internet users to place orders online, but according to unrebutted information in the Complaint, it does not, and only contains a form designed to obtain personal data from Internet users. It displays the Complainant's trademark APTAMIL as well as pictures of the Complainant's products with no disclaimer as to the relationship or lack thereof with the Complainant.

Therefore, given the circumstances in the case the Panel considers that the Respondent must have had knowledge of the Complainant's rights in the APTAMIL trademarks when it registered the disputed domain name and it has intentionally created a likelihood of confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainants' contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <aptamilsuppliers.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: October 4, 2023