

## **ADMINISTRATIVE PANEL DECISION**

Sarepta Therapeutics, Inc. v. Milton Rottman  
Case No. D2023-3825

### **1. The Parties**

The Complainant is Sarepta Therapeutics, Inc., United States of America ("United States"), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is Milton Rottman, Spain.

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

The disputed domain name <aldystro.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 September 13, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 14, 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 (REDACTED FOR PRIVACY (DT), Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 amended Complaint on September 19, 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 September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 17, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on October 24, 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 global biotechnology company that develops and sells precision genetic medicines and develops gene therapy products for the treatment of rare diseases.

The Complainant is the owner of the United States trademark application for No. 97368281 for ALDYSTRO (word mark), filed on April 18, 2022.

The Complainant is also the owner of the international trademark registration No. 1694412 for ALDYSTRO (word mark), registered on October 12, 2022, in class 5, claiming priority on April 18, 2022. This international trademark designates the United Kingdom and European Union and protection has been granted for both designations.

The disputed domain name <aldystro.com> was registered on April 21, 2022 and is not pointed to an active website.

#### **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 maintains that the disputed domain name is confusingly similar to its trademark ALDYSTRO, as it incorporates the ALDYSTRO word mark in its entirety, with the sole addition of the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way affiliated with the Complainant, nor has he ever been authorized by the Complainant to register or use the disputed domain name or the Complainant's mark.

The Complainant also contends that the Respondent is not commonly known by the name "Aldystro" and that he is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial use, since the disputed domain name resolves to an inactive website and is thus being passively held.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent has intentionally registered the disputed domain name for the purpose of engaging in opportunistic cybersquatting and submits that the Respondent is passively holding or warehousing the disputed domain name.

The Complainant emphasizes that the fact that the Respondent registered the disputed domain name merely three days after the Complainant filed its first trademark application for the ALDYSTRO mark is strong evidence that the Respondent registered the disputed domain name in bad faith. The Complainant underlines that the fact that the disputed domain name uses a masking service to mask the Respondent's identity is a further indication of both bad faith registration and use under the Policy.

Lastly, the Complainant contends that the registration and use of the disputed domain name creates a form of initial interest confusion, which attracts Internet users to the disputed domain name based on the inclusion of the exact ALDYSTRO word mark.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, the Respondent sent an informal email communication on October 24, 2023, asking if the appointed panel could represent him, how much it would be, and how to defend his case.

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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. Indeed, as highlighted above, the Complainant has provided evidence of ownership of an International trademark registration for ALDYSTRO designating the European Union and United Kingdom, and protection has been granted for both designations. Accordingly, the Complainant's trademark is registered in both the European Union and United Kingdom.

The Panel finds that the disputed domain name is identical to the trademark ALDYSTRO as it reproduces the trademark in its entirety with the mere addition of the gTLD ".com", which can be disregarded when comparing the similarities between a domain name and a trademark. [WIPO Overview 3.0](#), sections 1.7 and 1.11.1.

Therefore, based on the available record, 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.

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 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademark.

Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Furthermore, there is no evidence that the Respondent may have used the disputed domain name – currently not pointed to an active website – in connection with a *bona fide* offering of goods or services of a legitimate noncommercial or fair use without intention to misleadingly divert the consumers or to tarnish the Complainant’s trademark.

In addition to the above, the disputed domain name, being identical to the Complainant’s trademark, carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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

### **C. Registered and Used 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 is being 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.

The disputed domain name was registered by the Respondent on April 21, 2022, before the Complainant’s International trademark No. 1694412 for ALDYSTRO was registered and the protection of the mark in the United Kingdom and European Union was granted. However, the trademark application of the cited International trademark was based on the Complainant’s application for the same mark in the United States filed on April 18, 2022, three days before the registration date of the disputed domain name.

As stated in section 3.8.1 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent. However, in certain limited circumstances, where the facts of the case establish that the respondent’s intent in registering the disputed domain name was to unfairly capitalize on the complainant’s nascent trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include, amongst others, registration of a domain name following the complainant’s filing of a trademark application. [WIPO Overview 3.0](#), section 3.8.2.

The Panel notes that the Complainant's ALDYSTRO mark is distinctive with no apparent dictionary meaning, that the Respondent registered the disputed domain name merely three days after the filing of the trademark application for ALDYSTRO in the United States, and that the Respondent did not explain his choice of the term "Aldystro" in the disputed domain name. In the circumstances of the case, the Panel finds on balance of probabilities that at the time of registering the disputed domain name, the Respondent was aware of the Complainant's trademark filing and has the intent to target the Complainant and its nascent trademark rights.

The disputed domain name is not pointed to an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

[WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel finds that, in view of the distinctiveness of the Complainant's trademark, the identity of the disputed domain name with the trademark and the Respondent's failure to submit a formal response to provide any evidence of actual or contemplated good faith use, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, 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, <aldystro.com>, be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: November 7, 2023