

ADMINISTRATIVE PANEL DECISION

Menarini Silicon Biosystems S.p.A. v. Domain Administrator, Sugarcane Internet Nigeria Limited

Case No. D2023-4373

1. The Parties

The Complainant is Menarini Silicon Biosystems S.p.A., Italy, represented by Società Italiana Brevetti, Italy.

The Respondent is Domain Administrator, Sugarcane Internet Nigeria Limited, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <siliconbiosystem.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 (“Registrant: Unknown”) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 27, 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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any formal response. On November 28, 2023, the Center notified the Parties of the Commencement of Panel Appointment Process.

The Center appointed Adam Taylor as the sole panelist in this matter on December 4, 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 part of the Menarini Group, a pharmaceutical business operating in some 140 countries.

The Complainant owns Italian trade mark No. 362020000211277 for SILICON BIOSYSTEMS THE LIVING CELL COMPANY, registered on June 12, 2001, in classes 9 and 10. The Complainant has also provided evidence of use of that mark as a trading name since at least 2010.

The Complainant operates a website at “www.siliconbiosystems.com”.

The disputed domain name was registered on September 20, 2023.

The disputed domain name has been used to resolve to a website with general pay-per-click (“PPC”) links.

The Respondent has been found to have registered and used domain names in bad faith in a number of UDRP cases. See, e.g., *Sentara Healthcare v. Domain Administrator, Sugarcane Internet Nigeria Limited* WIPO Case No. [D2023-0745](#).

5. Parties’ Contentions

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. The Center received apparent automatic replies from the Respondent’s email address on October 31, 2023, and November 28, 2023, with the following content:

“Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us.”

6. Discussion and Findings

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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognisable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. A domain name that consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element and the Panel considers that the use of "siliconbiosystem" in the disputed domain name was likely intended as misspelling of the pluralised version of that term, which is the dominant part of the Complainant's mark.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the disputed domain name has been used for a parking page with PPC links to general goods/services which bear no obvious descriptive relationship to the disputed domain name. In the Panel's view such use of the disputed domain name could not of itself confer rights or legitimate interests.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the Panel's view, it is likely that the Respondent was aware of the Complainant when registering the disputed domain name, which comprises a singularised version of the dominant part of the Complainant's mark and was most likely an intentional misspelling. The Panel notes that the Respondent has not appeared in this proceeding to argue otherwise.

In the Panel's view, by using the disputed domain name, comprising a likely misspelling of the dominant part of the Complainant's mark, and being almost identical to the Complainant's domain name <siliconbiosystems.com>, in connection with a parking page with PPC links, the Respondent has intentionally created a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

The likelihood of confusion arising from the nature of the disputed domain name is not affected by the probability that users arriving at the Respondent's site will realise that the site is not connected with the Complainant because the PPC links do not relate directly to the Complainant's industry. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates a risk of implied affiliation with the Complainant, and the Respondent's likely intention was to benefit from at least some of the traffic intended for the Complainant.

The Panel further notes that the Respondent has engaged in a pattern of cybersquatting activity.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <siliconbiosystem.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: December 18, 2023