

ADMINISTRATIVE PANEL DECISION

Sanofi v. Rajesh Chauhan, Qloudin Technologies Pvt Ltd
Case No. D2024-1550

1. The Parties

The Complainant is Sanofi, France, represented by Selarl Marchais & Associés, France.

The Respondent is Rajesh Chauhan, Qloudin Technologies Pvt Ltd, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2024. On April 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 2024, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024, 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 April 17, 2024.

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 April 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent sent an email communication to the Center on April 15, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on May 15, 2024. 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 in this administrative proceeding is Sanofi, a French multinational pharmaceutical company headquartered in Paris, France.

The Complainant is present in more than 180 countries on all 5 continents and employs more than 90,000 people.

The Complainant is ranked among the largest pharmaceutical companies in the world by prescription sales.

The Complainant develops and sells a wide range of patented prescription drugs, one of them being the drug called Ambien used in the field of treatment of the central nervous system, including the treatment of insomnia.

Among others the Complainant is owner of the European Union Trademark Registration No. 003991999 for the word mark AMBIEN registered since November 28, 2005 for pharmaceutical preparations.

The Complainant also owns a number of domain names comprising its AMBIEN mark, e.g., the domain name <ambien.com> registered on April 12, 2000. This domain name redirects to the Complainant's AMBIEN and AMBIEN CR drugs related website intended for use by residents of the United States of America only.

The disputed domain name was registered on March 21, 2024, and was redirecting to a website at which the Complainant's AMBIEN branded pills were offered for sale, which the Complainant alleges were counterfeit products.

Currently, the disputed domain name does not resolve to any 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 contends that:

- the disputed domain name, which fully incorporates its well-known AMBIEN mark is confusingly similar to it because the addition of the term "official" to the trademark in the disputed domain name is not sufficient to prevent a finding of confusing similarity between the disputed domain name and the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the Respondent's incorporation of its well-known mark into the disputed domain name and use of it for a website that offered for sale counterfeit AMBIEN pills is evidence of bad faith registration and use of the disputed domain name.

The Complainant requests that the disputed domain name be cancelled.

B. Respondent

On April 15, 2024 the Respondent sent two informal emails to the Center, which read:

- "Hi, This domain belong to one of our customer"; and
- "Hi, The associated domain is already been taken down by NameCheap and we already informed the customer regarding the same. We also suspended the hosting account for the reported customer".

Apart from these messages the Respondent did not reply to the Complainant's contentions.

According to the Registrar's verification, the Respondent is the registrant of the disputed domain name. The Center informed the Respondent that it was not in a position to assess such assertion, which would be a matter for the appointed Panel, and informed the Respondent of the possibility of forwarding the notification of Complaint to the claimed customer. However, the Center did not receive any further explanation in this regard, nor evidence of the claimed relationship between the Respondent and its customer. The Panel considers that the registrant of a domain name has certain obligations under the Policy, irrespective of whether the registrant has registered the disputed domain name for a third party or not. The Panel finds that Rajesh Chauhan, Qloudin Technologies Pvt Ltd is the Respondent in this proceeding, that any use of the disputed domain name by the Respondent should be construed as a use of the disputed domain name by the Respondent or its customer (if there is any), and that the proceedings have been rightfully instituted against the Respondent.

6. Discussion and Findings

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the 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.

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 entirety of the AMBIEN mark is reproduced and is recognizable 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.

Although the addition of other terms, here the term "official" may bear on assessment of the second and third elements, the Panel finds the addition of such term does 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.

The Panel finds that 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 recognized 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.

According to the evidence submitted by the Complainant, the Respondent used the disputed domain name to deceive Internet users looking for the Complainant by redirecting them to its own website at which the Respondent appeared to have offered for sale 10 mg dose AMBIEN pills which the Complainant assumes were counterfeit goods.

There is not sufficient evidence to conclude whether the AMBIEN pills offered for sale at the Respondent’s website at the disputed domain name ultimately existed, and if so, whether there were counterfeit.

The Panel notes that the website at the disputed domain name displayed the packaging of the Complainant’s 10 mg dose AMBIEN pills as well as the Complainant’s signature AMBIEN logo. Consequently, even if the products that were displayed on the Respondent’s website at the disputed domain name existed and were genuine, given the overall impression of the website at the disputed domain name coupled with the composition of the disputed domain name referring to the AMBIEN pills being official products, the Panel finds that the Respondent’s website would still not qualify as fair use.

It is evident that the Complainant never authorized, licensed, or allowed the Respondent to use its AMBIEN mark in the disputed domain name or in any other way that would confer validity or legitimacy upon such usage.

The Respondent was impersonating the Complainant by using on its website at the disputed domain name the Complainant’s trademark, signature logo and product images. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In addition, the inherently misleading nature of the disputed domain name, incorporating the Complainant’s trademark and a descriptive term, carries risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Finally, the Panel notes that even if the Respondent’s allegations that the “domain belong to one of our customer” are accurate, registering a domain name on behalf of another person as such does not constitute a legitimate interest in such registration.

The Panel finds that 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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel notes that the Complainant's AMBIEN mark is inherently distinctive for the corresponding goods and its priority predates the date of registration of the disputed domain name. A basic Internet search against the disputed domain name returns solely the Complainant and its AMBIEN branded pharmaceuticals.

The Panel agrees with a number of UDRP panels that the Complainant's AMBIEN mark is well-known (see e.g., *Sanofi v. Linda Brown*, WIPO Case No. [D2019-1189](#)). The mere registration of a domain name that is identical, or as in the present case confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The website at the disputed domain name prominently featured the Complainant's trademark, signature logo and product images. For all the above-mentioned reasons, in view of the Panel, it is clear that the Respondent had actual knowledge of the Complainant and its trademark and has registered the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. Paragraph 4(b)(iv) of the Policy.

The Respondent's intent to target the Complainant's AMBIEN trademark can be readily inferred from the contents of the Respondent's website at the disputed domain name that sought to impersonate the Complainant by directing Internet traffic to its website in order to gain illegitimate profit through impersonation or false association. Panels have held that the use of a domain name for illegal activity, in this case impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As mentioned above, currently the disputed domain name does not resolve to any active website. However, this does not prevent a finding of bad faith when considering the totality of the circumstances. [WIPO Overview 3.0](#), section 3.3.

In this context, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the composition of the disputed domain name as mentioned above, the Respondent's failure to submit a substantive response supported by evidence to explain the registration and use of the disputed domain name, and that any good faith use to which the inherently misleading disputed domain name may be put appears to be implausible. The Panel finds that in these circumstances the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 <ambienofficial.com> be cancelled.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: May 28, 2024