

ADMINISTRATIVE PANEL DECISION

Chiesi Farmaceutici S.p.A. v. Lorin Merrick
Case No. D2024-2401

1. The Parties

The Complainant is Chiesi Farmaceutici S.p.A., Italy, represented by Ubilibet, Spain.

The Respondent is Lorin Merrick, United States of America.

2. The Domain Name and Registrar

The disputed domain name <chiesi.site> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 12, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 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 June 14, 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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 16, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on July 25, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a pharmaceutical company that works in areas such as respiratory diseases, neonatology and special care with key products such as inhalation therapies for asthma and COPD, surfactants for premature infants. The Complainant has been recognized through awards. It operates in 29 countries with products available in more than 80 countries, and revenue exceeding EUR 3 billion last year.

The Complainant owns trademark registrations for CHIESI standalone or in combination, such as United States trademark registration number 75382942 dating back to February 2, 1999.

The Respondent registered the Domain Name on November 29, 2023. At the time of drafting the Decision, the Domain Name resolved to an error website.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and argues that the Domain Name is identical to the Complainant's trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has not been commonly known by the Domain Name. The Complainant has neither authorized, nor given its consent to the Respondent to register or use the Domain Name. The Complainant is not aware of any use by the Respondent, or demonstrable preparations to use, the Domain Name, or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. The fact that the Domain Name appears to never have resolved to an active site, shows cybersquatting intent and not a legitimate interest in the Domain Name.

The Complainant argues that the Respondent knew or should have known about the existence of the Complainant's trademark. By registering the Complainant's trademark as a Domain Name, the Respondent intentionally creates a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement. Moreover, the mere registration of a domain name that is identical to a widely-known trademark by an unaffiliated entity creates by itself a presumption of bad faith and typically signifies an intent to capitalize on the trademark. Finally, the Respondent's current lack of active use of the Domain Name does not under the doctrine of passive holding prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has established that it has rights in the trademark CHIESI. The Domain Name is identical to the Complainant's trademark. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level-Domain (gTLD); see [WIPO Overview 3.0](#), section 1.11.1.

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, 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 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. If the respondent fails to come forward with relevant evidence, the complainant is deemed to have satisfied the second element. See [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 Domain Name. The Respondent has not rebutted the Complainant's showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name. Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services.

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.

The fact that the Domain Name is identical to the Complainant's prior registered trademark makes it probable that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. Based on the case file, it appears that the Respondent is intentionally creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement. The non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. 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 the Domain Name <chiesi.site> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: August 6, 2024