

ADMINISTRATIVE PANEL DECISION

**ABPI Associação Brasileira De Propriedade Intelectual v. Richard Totik,
Unlimited Traffic Limited
Case No. D2024-3265**

1. The Parties

The Complainant is ABPI Associação Brasileira De Propriedade Intelectual, Brazil, represented by Kasznar Leonardos Advogados, Brazil.

The Respondent is Richard Totik, Unlimited Traffic Limited, China.

2. The Domain Name and Registrar

The disputed domain name <abpi.org> is registered with GoDaddy Online Services Cayman Islands Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 8, 2024. On August 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 13, 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 amendment to the Complaint on August 13, 2024.

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 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2024. The Response was filed with the Center on September 7, 2024. The Center sent an acknowledgement of receipt of Response on September 9, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 16, 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

Founded on August 16, 1963, the Complainant is a Brazilian non-profit association with its head office in Rio de Janeiro, Brazil. The Complainant promotes the importance of intellectual property within Brazil and worldwide, and states that it is at the forefront of academic and legal debates on the subject.

In Brazil, the Complainant as a national group represents the Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI), a global consultation entity for the study and promotion of intellectual property. It is also a partner in the Ligue Internationale Du Droit de la Concurrence (LIDC) and of the Global IP Network, which brings together national intellectual property associations from major economies.

The Complainant is the owner of a family of registered trademarks for the mark ABPI, including figurative and word marks. For example, the Complainant is the owner of Brazilian Registered Trademark Number 811258211 for the word mark ABPI, registered on October 23, 1984 in National Classes 41.40, 41.50, and 41.60. The Complainant is also the owner of the domain name <abpi.org.br>, registered on January 30, 1997.

The Respondent is a Hong Kong, China, company, incorporated in 2016, together with one of its directors. The Respondent states that it acquired the disputed domain name in 2016 as part of an extensive domain name portfolio transfer, which the Respondent intended to hold as a long-term company asset, planning to develop each domain name into a valuable content resource for Internet visitors. Consequently, although the disputed domain name was registered on March 3, 2005, the operative date for the assessment of registration and use in bad faith is the date of the Respondent's acquisition of the disputed domain name in 2016.

According to screenshots produced by the Complainant dated July 24, 2024, the disputed domain name points to a landing page stating that the disputed domain name may be for sale, and inviting inquiries and offers via a form provided by an aftermarket domain name resale service. Said landing page features two pay-per-click ("PPC") advertising links related to trademark services and one link related to laboratory products. Said trademark services links ultimately point to advertisements for entities providing intellectual property services. The laboratory link points to a supplier of laboratory equipment, accessories or consumables.

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 wholly incorporates the Complainant's registered trademark, and that this is sufficient to establish confusing similarity for the purposes of the Policy, adding that the suffix ".org" may be disregarded for comparison purposes.

The Complainant notes that the Respondent is not identified in the Whois database as the disputed domain name, is not known by the Complainant, and the Complainant carries out no activity, nor has any business with the Respondent. The Complainant adds that it has never authorized the Respondent to register or use

any domain name incorporating its ABPI trademark, nor has granted any license or other authorization for its use.

The Complainant asserts that it is a large organization specializing in intellectual property, adding that its trademark predates the registration of the disputed domain name. The Complainant submits that the Respondent must have been aware of the Complainant's goodwill and reputation, and the fame of its trademarks, considering the Complainant's Internet presence via its website. The Complainant adds that the choice of disputed domain name does not seem to be a mere coincidence but has been done on purpose to generate a likelihood of confusion with the Complainant's trademarks and/or to make a profit in a subsequent sale to the Complainant or a third party.

The Complainant contends that the disputed domain name was intentionally selected and registered to target and mislead Internet users, and to take predatory advantage of the goodwill and reputation of the Complainant and its trademark, noting that the Respondent uses the disputed domain name in bad faith to make a clear reference to the Complainant's area of expertise by linking it to companies offering intellectual property services, causing consumer confusion and/or an undue and fraudulent association. The intellectual property related links mislead the consumer into believing that the advertised services have a relation to the Complainant. The disputed domain name displays a notice that it is available for sale, demonstrating the Respondent's real intention and its lack of rights or legitimate interests therein. The Complainant's marks are so well-known that it should be deemed that the registration of the disputed domain name has been carried out per se in bad faith.

The Respondent's identity in the Whois record was anonymous and information on the associated website did not clearly identify the Respondent. The use of fictitious and ineffective contact particulars without a valid reason constitutes bad faith. Panels under the Policy have also viewed a respondent's use of a privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent notes that the Complainant's trademark is not the only one with a similar set of letters. There are 18 pages of search results for the letters "abpi" on a Google search, with the top result being The Association of the British Pharmaceutical Industry with a website at "abpi.org.uk". Said association was named as such in 1948, pre-dating the Complainant's year of establishment. The initials also indicate a beef processing facility in Canada, an insurance brokerage in Seattle, United States of America, and a Swiss art gallery. The Respondent asserts that the Complainant cannot claim to be the exclusive or sole owner of the related trademark.

The Respondent notes from a corresponding acronym search that the acronym "abpi" can also refer to the "Ankle-brachial pressure index", a measure of the drop in blood pressure in the arteries supplying the legs, the "Ankle Systolic Blood Pressure Index", "Accelerated Partial Breast Irradiation", and various third party entities also sharing these initials.

The Respondent contends that it is easier to recognize the Complainant via its ".br" domain name as it is a Brazilian entity, adding that it is impossible to confuse the disputed domain name with the Complainant's Brazilian trademark.

The Respondent submits that since it acquired the disputed domain name in 2016, it has always been parked and never used to host any website content that would cause damage to the Complainant through competition or damage to the Complainant's trademark or business reputation, and the Complainant has provided no effective evidence to the contrary. The Respondent states that its intent is not to realize commercial gains misleadingly. The Respondent quotes the terms of the WIPO Overview of WIPO Panel

Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 2.9, noting that for the use of the disputed domain name hosting PPC links to be regarded as unfair, there must be a negative impact on the reputation and goodwill of the Complainant's mark or competition with the Complainant. The Respondent submits that the Complainant does not refer to such circumstances.

The Respondent states that it has held the disputed domain name continuously for eight years and intends to develop it eventually as a valuable resource for Internet visitors. The Respondent submits that it acquired the disputed domain name in 2016 from a pool of already registered domain names that had been abandoned by registrants with no claim of trademark infringement, and adds that no-one has expressed interest in the disputed domain name since it was parked. The Respondent points out that the history of the disputed domain name shows that it did not host any content from 2001 to 2004.

The Respondent explains that it is not in full control of the parking company's advertising or "might be for sale" notices. The Respondent insists that it did not acquire the disputed domain name to prevent the Complainant from reflecting its mark in a corresponding domain name, nor has engaged in a pattern of such conduct. It notes that the Parties are not competitors, and concludes that there has been no attempt by the Respondent to attract Internet users for commercial gain to the Respondent's website by creating a likelihood of confusion with the Complainant's mark.

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 trademark and the disputed domain name. [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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Respondent's case that there are third party users of a similar mark or of the acronym contained in the mark is not relevant to the assessment of the Complainant's standing under the first element of the Policy. All that the Complainant must show for the purposes of such element is that it has a trademark that is identical or confusingly similar to the disputed domain name, which it has done.

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 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 on the basis that the Respondent is not commonly known by the disputed domain name, has no business with the Complainant, and was neither licensed nor otherwise authorized by the Complainant to use the Complainant's trademark in a domain name. The Complainant adds that disputed domain name appears to be targeting the (Complainant's) trademark value of the term "abpi" by referencing intellectual property services. The Panel therefore turns to the Respondent's case in rebuttal.

The essence of the Respondent's case is that it acquired the disputed domain name as part of a larger portfolio of domain names, that it is entitled to park the disputed domain name as it has done, and that it plans to develop the disputed domain name in due course. The Respondent also asserts that there are various other meanings for the initials in the disputed domain name, such that the Complainant does not have exclusive rights over this term.

For a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent's evidence supporting its explanation for its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant's mark. [WIPO Overview 3.0](#), section 2.10.2. Here, no such credible and legitimate intent has been put forward. The Respondent asserts that it intends to develop the disputed domain name eventually "as a valuable resource for Internet visitors" but provides no details as to what such resource would be. For example, the Respondent does not demonstrate that it is legitimately connected with one of the alternative meanings for the acronym that it puts forward. Its alleged intent to develop the disputed domain name "eventually" cannot amount to demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, within the meaning of paragraph 4(c)(i) of the Policy, since nothing has been demonstrated, and the matter is merely the subject of an assertion that is unsupported by any evidence.

Importantly, the present use of the disputed domain name capitalizes on the reputation and goodwill inherent in the Complainant's trademark. As demonstrated by the Complainant's screenshots, which have not been challenged by the Respondent, the bulk of the PPC advertising on the website associated with the disputed domain name points to various intellectual property services, creating the false impression of an endorsement by the Complainant's association. The Respondent notes the terms of the [WIPO Overview 3.0](#), section 2.9, and argues that for the use of the disputed domain name hosting PPC links to be regarded as unfair, there must be a negative impact on the reputation and goodwill of the Complainant's mark or competition with the Complainant. Here, it is the false impression of the endorsement of the various intellectual property services, over which the Complainant has no control, that has such negative impact.

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 present case, the Panel notes that the Respondent acquired the disputed domain name as part of a larger portfolio and has parked it with PPC advertising that targets the Complainant's trademark rights. The Respondent claims that it has no control over the content provided by the parking service.

Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. While a respondent cannot disclaim responsibility for links appearing on the website associated with its domain name, panels have found positive efforts by the

respondent to avoid links which target the complainant's mark (e.g., through "negative keywords") to be a mitigating factor in assessing bad faith. [WIPO Overview 3.0](#), section 3.5.

Consequently, the Respondent remains responsible for the PPC advertising on the website associated with the disputed domain name even if it claims to have no control over the same. Ultimately, it is the Respondent's decision to place the disputed domain name with a parking service to which it cedes such control, and it bears the ultimate responsibility for such decision, and for any content that is published on the corresponding website thereafter. There is no evidence of mitigating factors in assessing bad faith regarding any attempt to suppress links targeting the Complainant's mark. Nor is there any evidence that the Respondent, as a bulk purchaser of domain names, screened these against readily-available online databases to avoid the registration of trademark-abusive domain names, and as such, the Respondent is responsible for any resulting abusive registrations under the concept of willful blindness. [WIPO Overview 3.0](#), section 3.2.3.

The fact that the acronym in the disputed domain name might lend itself to other meanings, or to reference other entities or associations, does not avail the Respondent in the present case. The PPC advertisements, which the Respondent does not seek to dispute or challenge, are predominantly targeting the Complainant's organization, and they do not make non-trademark related references. It could be argued that the single laboratory equipment link might be targeting the other trademark owner of an ABPI trademark to which the Respondent refers, in that laboratory equipment may have more in common with pharmaceuticals than intellectual property per se,¹ but the fact that such link might target an alternative trademark, or none, whether taken together with or separately from the Complainant's mark, does not constitute registration and use in good faith.

Based upon the Complainant's unchallenged screenshots, the bulk of the abuse caused by the disputed domain name arises from targeting of the Complainant's trademark. Associating such mark with advertisements for third party intellectual property services causes confusion and constitutes a false and unfair representation of the Complainant's endorsement of such services for commercial gain. The non-trademark related uses of the acronym for which the Respondent contends do not appear to be the purpose for which the disputed domain name has been registered and used. The Panel concludes that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of a service on such website. This constitutes circumstances that, when found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith in terms of paragraph 4(b)(iv) of 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 <abpi.org> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: September 30, 2024

¹ It is likewise possible that this link also targets the trademark value of the Complainant's mark in that it may be referring to inventions created in a laboratory for which patent or other intellectual property protection could be sought.