

ADMINISTRATIVE PANEL DECISION

Small Pharma Limited v. jerry menez, KITTENCARECENTER
Case No. DCO2022-0098

1. The Parties

The Complainant is Small Pharma Limited, United Kingdom, represented by Stobbs IP Limited, United Kingdom.

The Respondent is jerry menez, KITTENCARECENTER, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <smallpharma.co> (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 November 3, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 2022, 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 November 22, 2022.

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 November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 16, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on December 21, 2022. 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 United Kingdom company, founded in 2015, that specializes in the research and development of short-acting psychedelics combined with therapy for under-served mental health conditions. Since August 27, 2021, the Complainant has operated a website at “www.smallpharma.com” (the “Complainant’s Website”) which publicizes the Complainant’s projects, industry achievements, and research timelines. Between January and April 2021, the Complainant raised USD 60 million to fund research and development into psychedelic-based mental health treatments under the word mark SMALL PHARMA (the “SMALL PHARMA Mark”) and later that year the Complainant’s research progressed into clinical trials, with its accomplishments publicized internationally.

The Complainant holds a trademark registration for the SMALL PHARMA Mark in the United Kingdom (registration no. UK00003244617 with a registration date of October 13, 2017, for goods and services in classes 5, 10, 35, and 42).

The Domain Name was registered on October 19, 2021. The Domain Name is presently inactive but prior to the commencement of the proceeding resolved to a website (the “Respondent’s Website”) that under the SMALL PHARMA Mark purported to sell illegal drugs. The Respondent’s Website reproduces copyrighted material owned by the Complainant and displayed on the Complainant’s Website and makes express reference to individuals employed by the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s SMALL PHARMA Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the SMALL PHARMA Mark, having registered the SMALL PHARMA Mark in the United Kingdom. The Domain Name is identical to the SMALL PHARMA Mark.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Rather the Respondent is using the Domain Name to resolve to a website that passes off as being associated with the Complainant while offering illegal substances. These activities do not amount to a *bona fide* offering of goods and services.

The Domain Name was registered and is being used in bad faith. By using the Domain Name to resolve to a website that passes off as the Complainant while offering illegal substances, the Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s Website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the SMALL PHARMA Mark, having a registration for the SMALL PHARMA Mark as a trademark in the United Kingdom, among others. Disregarding the ".co" country-code Top-Level Domain ("ccTLD") as an essential element of any domain name, the Domain Name is identical to the SMALL PHARMA Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, 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; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the SMALL PHARMA Mark or a mark similar to the SMALL PHARMA Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use.

The Respondent has used the Domain Name to operate a website that, through the use of the Complainant's copyrighted material and reference to Complainant employees, is actively impersonating the Complainant online. Moreover, the Respondent's Website impersonates the Complainant for the purpose of advertising the sale of illegal pharmaceuticals. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.13, summarizes the consensus views of UDRP panels in treating claims of illegal activity in relation to potential respondent rights or legitimate interests in the following manner:

"Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [...]"

The Respondent's use of the Domain Name for the Respondent's Website, which impersonates the Complainant and offers the sale of illegal pharmaceuticals, is not a *bona fide* offering of goods or services and does not otherwise grant it rights or legitimate interests in the Domain Name.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to rights or legitimate interests in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the SMALL PHARMA Mark at the time the Domain Name was registered. The Domain Name resolved to a website impersonating the Complainant for the purpose of selling illegal pharmaceuticals. The Respondent does not provide, nor is it apparent to the Panel, any reason why the Domain Name was registered other than by reference to the Complainant. The registration of the Domain Name in awareness of the Complainant and its rights in the SMALL PHARMA Mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The Respondent has used the Domain Name to impersonate the Complainants for the purpose of committing a crime, namely the sale of illegal pharmaceuticals. Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[a]s noted in section 2.13.1, given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith."

Considering the composition of the Domain Name and its use for a website displaying the SMALL PHARMA Mark and material from the Complainant's Website, the Panel finds that the Respondent seeks to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the SMALL PHARMA Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. This is evidence of the registration and use of the Domain Name in bad faith (Policy, paragraph 4(b)(iv)).

Accordingly, the Panel finds that the Respondent has registered and used the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name, <smallpharma.co>, be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: January 4, 2023