

ADMINISTRATIVE PANEL DECISION

Ferring B.V. v. QINGRU WU

Case No. DCO2023-0085

1. The Parties

The Complainant is Ferring B.V., Netherlands (Kingdom of the), represented by Jacobacci Avocats, France.

The Respondent is QINGRU WU, China.

2. The Domain Name and Registrar

The disputed domain name <menopurpen.co> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2023. On October 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 9, 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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 13, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on November 20, 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 Ferring Group which is a biopharmaceutical group, founded 73 years ago, that currently owns subsidiaries operating in over 50 countries and markets its products in more than 100 countries.

MENOPUR is the trademarked name for a medicine launched in the 2000s indicated for the treatment of infertility and is available in more than 100 countries. The Ferring Group developed a new liquid formulation of MENOPUR in disposable pre-filled injection pen which is called "MENOPUR PEN", that was made available for patients in 2022.

The Complainant owns many trademark registrations for MENOPUR in several jurisdictions covering pharmaceutical products, including the following.

- European Union Trademark Registration No. 008695694 MENOPUR, filed on November 18, 2009, and registered on April 28, 2010, in class 5.
- United States of America Trademark Registration No. 2989995 MENOPUR, filed on October 16, 2002, and registered on August 30, 2005, in class 5.
- Colombian Trademark Registration No. 329927 MENOPUR, filed on September 14, 2006, and registered on March 28, 2007, in class 5.

The Complainant owns many domain names including the trademark MENOPUR registered for numerous years, and notably <menopur.com> used to display information on this medicine, the characteristics of the treatment, and injection training.

The disputed domain name which does not resolve to an active webpage, was registered on July 10, 2023, and is offered for sale by the Respondent on the platform "www.dan.com" for USD 1,450.

5. Parties' Contentions

A. Complainant

The Complainant, in essence, claims that the disputed domain name is confusingly similar to the trademark MENOPUR in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant never authorized the Respondent or any other person to register the disputed domain name, which is made up of its trademark.

There is no indication that the Respondent is known by the disputed domain name.

The Respondent has registered the disputed domain name to unfairly capitalize on the Complainant's trademark.

The specific structure of the disputed domain name incorporating the Complainant's prior trademark but also the entire product name "MENOPUR PEN" reflects an impersonation of the Complainant or at least suggests an endorsement, which is not the case.

The bad faith of the Respondent is also supported by the Respondent's offer to sell the disputed domain name for USD 1,450, which is an amount likely in excess of the Respondent's out-of-pocket costs.

Finally, the Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's MENOPUR trademark.

The disputed domain name incorporates the Complainant's trademark MENOPUR in its entirety with the addition of the term "pen", which is not sufficient to prevent a finding of confusing similarity between the Complainant's trademark MENOPUR and the disputed domain name. Section 1.8 of the [WIPO Overview 3.0](#) indicates that where the relevant trademark is recognizable within the disputed domain name, as it clearly is in this case, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The ".co" Top-Level Domain ("TLD") and country code for "Colombia" is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark MENOPUR and that the requirements of paragraph 4(a) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proven that it owns the MENOPUR trademark. There is no indication that they have licensed or otherwise permitted the Respondent to use any of their trademarks, nor have they permitted the Respondent to apply for or use any domain name incorporating its trademarks.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name. Rather, the disputed domain name directly infers an association with the Complainant given the descriptive addition of "pen" to the Complainant's trademark, ultimately identifying the Complainant's product "MENOPUR PEN", and is being offered for sale, which reflects the Respondent's intent to commercialize the disputed domain name and the Complainant's reputation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded, and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark MENOPUR mentioned in section 4 above ("Factual Background") when it registered the disputed domain name on July 10, 2023. By that time, the Complainant had long ago registered and intensely used the trademark MENOPUR and had launched the "MENOPUR PEN" product in the market in 2022.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's trademark MENOPUR in its entirety and adding the term "pen", which only contributes to increasing confusion with the Complainant's trademark and the "MENOPUR PEN" product, with the intention to confuse Internet users and capitalize on the fame of the Complainant's trademark for its benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name that reflects an attempt of passing-off of as the Complainant, and the offer for sale at an amount likely in excess of the Respondent's out-of-pocket costs, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

Finally, the fact that the disputed domain name does not resolve to an active webpage does not prevent a finding of bad faith under the "passive holding" doctrine mentioned in section 3.3 of [WIPO Overview 3.0](#).

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <menopurpen.co>, be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: December 4, 2023