Decision for dispute CAC-UDRP-102576

Case number	CAC-UDRP-102576
Time of filing	2019-07-18 09:21:44
Domain names	handipharm.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	HANDI-PHARM GROUPE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Merrianne Wardle

OTHER LEGAL PROCEEDINGS

The Panel is not cognizant of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant registered national word trademark no. 3960652 in France for “HANDI-PHARM” in November 13, 2012. The Complainant also owns the combined trademark no. 3446078 registered in France for “HANDI-PHARM” since August 11, 2006.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant owns a national trademark for “HANDI-PHARM” in France since at least August 11, 2006. A second word mark trademark is also owned by the Complainant in France for “HANDI-PHARM” since November 13, 2012.

The Complainant owns and operates the domain name <handi-pharm.com>.

The disputed domain name was registered in February 9 February, 2012.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant states that the disputed domain name is identical to its trademarks HANDI-PHARM®.

I. The disputed domain name contains Complainant's registered trademarks in their entirety. The disputed domain name consists of the HANDI-PHARM mark without the dash and the generic Top-level Domain ("gTLD"). It does not distinguish the disputed domain name from Complainant's trademarks.

Accordingly, Complainant finds that the disputed domain name is identical to a trademark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

II. The Complainant states that the Respondent does not have any rights or legitimate interest in the disputed domain name. The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant contends that Respondent is not affiliated with nor authorized by HANDI-PHARM GROUPE in any way. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant does not carry out any activity for, nor has any business with Respondent. Neither license nor authorization has been granted to Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain name by Complainant.

The disputed domain name redirects to a parking page with commercial links in relation to Complainant.

Finally, Complainant sent a cease and desist to Respondent about this registration. Respondent did not reply. Accordingly, the Complainant contends the Respondent has no rights or legitimate interests on the disputed domain name.

III. The Complainant states that the disputed domain name has been registered and is being used in bad faith.

The Complainant contends that the disputed domain name redirects to a parking page with commercial links in relation to Complainant for which Respondent would be expected to receive revenue. Use of a confusingly similar domain name to redirect Internet users to a website containing advertisements and links to third party websites for commercial gain is indicative of bad faith registration and use per paragraph 4(b)(iv) of the Policy.

Moreover, Respondent did not reply to the cease-and-desist letter the registration and use of good faith.

Accordingly, Complainant holds that Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the web site likely to disrupt the business of the Complainant.

On these bases, Complainant concludes that Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

The Respondent states being a resident of Australia and having been in the medical profession for over 35 years. At the time of registration of the disputed domain name in 2012, the Respondent was unaware of another entity in another country having trade marked the term "HandiPharm".

From 2012 until 2015 the disputed domain name was a subdomain of the webhosting company JustHost with a live

website. On ceasing webhosting with the company the disputed domain name was left still directed to JustHost. The Respondent contents not having received financial reward in any form for having left the disputed domain name in such a state. The disputed domain name has not been used since 2015.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP have been met and there is no other reason why it would be unsuitable to provide the Decision.

PRINCIPAL REASONS FOR THE DECISION

As per paragraph 4(a) of the Policy, in order for a complaint to succeed in relation to a domain name, a complainant must show the following:

(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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established its rights in the trademark “HANDI-PHARM” since at least 2014, as per evidence on record. Once the rights have been established, it is now necessary to examine the possible confusing similarity between the disputed domain name and the Complainant’s trademarks.

The disputed domain name incorporates the trademark in its entirety, namely “HANDI-PHARM”. The only perceptible difference between the two is the absence of the hyphen in the disputed domain name. This minor difference is not substantive enough to dispel the confusing similarity between the disputed domain name and the Complainant’s trademarks. Based on this analysis and informed by the consensus panel views set forth under paragraph 1.8 of WIPO Overview 3.0, the Panel finds that the disputed domain name is confusingly similar with the Complainant’s trademark.

Consequently, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant in any manner. Moreover, the Complainant asserts neither license nor authorization has been granted to the Respondent to make use of the

Complainant's trademarks, or apply for registration of the disputed domain name. Based on this assertions and the evidence on record, it is the view of the Panel that there are enough elements to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see paragraph 2.1 of WIPO 3.0 Overview).

The Respondent filed a brief Response alleging that at the time of registration of the disputed domain name, the Respondent was unaware of the existence of the "HANDI-PHARM" trademark in another country. No evidence of this assertion is provided, which is why the Panel must review the evidence on record to make a finding. The Respondent states having been in the medical profession for over 35 years; this is a field closely related to the business sector of the Complainant. The Respondent also provides evidence indicating the ownership of at least 16 domain names, which if anything indicates the Respondent's familiarity with the domain name registration process. This makes it difficult to conceive that the Respondent was unaware of the Complainant's domain name <handi-pharm.com> and the underlying trademark that confers the Complainant with rights and legitimate interests. Further to this, the Complainant makes no other allegations that would justify its rights or legitimate interests on the disputed domain name.

Based on the above, on balance of probabilities, and noting there is no other available evidence on record that would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name and subsequently the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Regarding the third element, the Panel notes the Respondent's familiarity with the domain name registration process, coupled with the Respondent's involvement with the medical profession for over 35 years, it is unlikely the Respondent was unaware of the Complainant's trademark. Even conceding that this is the case, the Panel finds that the Respondent ought to be aware of the Complainant's trademarks at the time of registration. After all, this is an obligation imposed under UDRP paragraph 2.

Furthermore, "panels have however found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of willful blindness; depending on the facts and circumstances of a case, this concept has been applied irrespective of whether the registrant is a professional domainer." (see paragraph 3.2.3 of the WIPO Overview 3.0).

In light of the circumstances of the case, based on the available records and on balance of probabilities, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the foregoing reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **HANDIPHARM.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2019-08-01

Publish the Decision