

Decision for dispute CAC-UDRP-103729

Case number CAC-UDRP-103729

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Domain names servier-medical.com

Case administrator

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

Complainant

Organization LES LABORATOIRES SERVIER

Complainant representative

Organization IP TWINS

Respondent

Name Helen Chavier

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks worldwide for "Servier" including the following:

- EU trademark SERVIER n° 004279171, dated February 7, 2005, duly renewed and designating goods and services in international classes 05, 35, 41, 42 and 44;
- International trademark SERVIER n° 814214, dated August 8, 2003, duly renewed, and designating goods and services in international classes 05, 35, 41, 42 et 44, i.a: in Austria (AT);
- International trademark SERVIER n° 571972, dated May 29, 1991, duly renewed and designating goods in international classes 01, 03 and 05;
- International trademark SERVIER n° 549079, dated January 19, 1990, duly renewed and designating goods and services in international classes 01, 03, 05, 10, 16, 35, 41 and 42, i.a: in Austria (AT).

Complainant is also the holder of numerous domain names incorporating its "Servier" trademark both within generic TLDs and geographical TLDs: <servier.com>, <servier.fr>, and many others.

FACTUAL BACKGROUND

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

The Complainant "Les Laboratoires Servier", is the largest independent French pharmaceutical group. Servier is present in 150 countries worldwide, 100 millions of patients are treated each day with the group's various medicines.

The Complainant is the owner of numerous trademarks and domain names worldwide for "Servier".

The position of the "Servier" term within the domain name is in the view of Complainant important insofar as domain names are read from left to right and the average internet user will very likely identify "servier" within the disputed domain name. The trademark of the Complainant further stands out because of the use of a hyphen between "servier" and "medical" in the disputed domain name.

The second level of the disputed domain name incorporates the whole of the Complainant's registered trademark "Servier", with the addition of the word "medical".

The Complainant contends that the distinctive component of the disputed domain name is "Servier", which is the Complainant's trademark. It is well established in the view of Complainant that the addition of a generic term such as "medical" does not allow a domain name to avoid confusing similarity with a trademark. In the present case, the addition of the term "medical" does not lessen the inevitable confusion of the disputed domain name with the Complainant's trademark. On the contrary, the Complainant contends that the association of its trademark with "medical" aggravates the confusing similarity of the disputed domain name with its SERVIER trademark, as "medical" is a generic term that is particularly relevant regarding the Complainant's business area.

It is also well established that the specific top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

The Complainant furthermore states, that the disputed domain name as registered by the Respondent is at the very least confusingly similar to the Complainant's trademark. Therefore, the Complainant contends that the first condition of Paragraph 4(a) of the Policy is deemed satisfied.

The Servier Group was founded in 1954 by Dr Jacques Servier who took over a small pharmaceutical company and over the years transformed it into the largest independent French pharmaceutical company using his own surname as a company denomination, business name, trademark and later as a domain name.

As stated above, "Servier" is a surname that has no specific meaning either in the French language and, to the Complainant's knowledge, in any other language, the only exception being one of the many conjugations of the German verb "Servieren" (imperative). This exception should not be considered as relevant in this case, considering the past use of the disputed domain name. The Respondent therefore in the view of Complainant cannot claim that "Servier" is a descriptive term which he needs to use in the course of his business activities to describe his goods or services.

A worldwide trademark search failed to reveal any "Servier" trademarks other than those in the name of the Complainant or its affiliates. To the best of the Complainant knowledge, the Respondent cannot therefore claim to have trademark rights over the word "Servier".

The Complainant has no business relationship with the Respondent, who does not enjoy any license, partnership or authorization from the Complainant.

In addition, the use of the disputed domain name, which redirects towards an error page, does not show any use that would indicate a bona fide offering of goods or service attached to the disputed domain name. Furthermore the Complainant argues, that the former use of the disputed domain name, which redirected towards a website posing as being affiliated with the Complainant, cannot be considered as legitimate.

Therefore, the Complainant contends that the second condition of Paragraph 4(a) of the Policy is deemed satisfied.

"Servier" is the surname of the founder of the Complainant company and a fanciful, arbitrary, distinctive term. The combination of the distinctiveness of the Complainant's trademark and its extensive use across the world makes it highly unlikely that the Respondent did not know about the Complainant before the registration of the disputed domain name.

Top-ranked results of a Google search relate to the Complainant.

Therefore, the Complainant argues, that at the very least, the Respondent knew or should have known that, when registering and using the disputed domain name, he would do so in violation of the Complainant's earlier rights.

This is all the more true when the Respondent redirected the disputed domain name toward a website published in German language and posing as "Servier", mentioning some of the Complainant's figures and partnerships. Said website has been taken down by its hosting provider after a Takedown notice sent by the Complainant's representative.

In light of the above and provided the absence of any authorization from the Complainant, the Complainant strongly believes that the disputed domain name was registered in bad faith by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and any related service or document.

Regarding the use of the disputed domain name, the Complainant contends that the past use of the disputed domain name qualifies as an intentional attempt to attract, for commercial gain, Internet users to the Respondent's web site by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site previously accessible through the disputed domain name.

Although the disputed domain name is not used on the web anymore on the date of the present Complaint, the Complainant sees no possible way whatsoever in which the Respondent would use the disputed domain name in connection with a bona fide offer of products or services. In those circumstances, the Complainant contends that any active use of the domain name by the Respondent would de facto amount to bad faith active use.

Currently, the disputed domain name points toward an error page.

In light of all the elements above, the Complainant contends that the disputed domain name was registered, was used and is being used in bad faith by the Respondent. Considering the above, the Complainant cannot imagine a good-faith registration and use of the disputed domain name by the Respondent.

Therefore, the Complainant contends that the third condition of Paragraph 4(a) of the Policy is deemed satisfied.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, 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

The Complainant has, to the satisfaction of the Panel, 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 were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

The Complainant owns "servier" trademark registrations effective in various jurisdictions.

The disputed domain name includes the Complainant's trademark in its entirety combined with the term "medical", which relates to the Complainant's business as a pharmaceutical operator. The addition of a term does not prevent a finding of confusing similarity under the first element. The nature of such additional terms may however bear on assessment of the second and third elements (section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

The Panel finds that the addition of such a term to the Complainant's trademark does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that the disputed domain name is confusingly similar with the Complainant's respective trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a prima facie showing indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270 and section 2.1 of WIPO Overview 3.0).

The Complainant has credibly submitted that the Respondent is not a licensee of the Complainant, nor has it been otherwise allowed by the Complainant to use the Complainant's trademark in domain names or otherwise. The Complainant has also credibly submitted that the Respondent has no rights or legitimate interests to the disputed domain name.

Accordingly, the Panel finds that the Complainant has made a prima facie case that has not been rebutted by the Respondent. In light of the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second

element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that 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 that complainant, for valuable consideration in excess of [the respondent’s] 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 or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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.”

The Panel agrees with Complainant that the combination of the distinctiveness of the Complainant’s trademark and its extensive use across the world for several decades makes it highly unlikely that the Respondent did not know about the Complainant before the registration of the disputed domain name.

Therefore, the Respondent knew or should have known that, when registering and using the disputed domain name, he would do so in violation of the Complainant’s earlier rights.

Furthermore, the Respondent redirected the disputed domain name toward a website published in German language and posing as “Servier” mentioning some of the Complainant’s figures and partnerships. Said website has been taken down by its hosting provider after a Takedown notice sent by the Complainant’s representative.

In light of the above and provided the absence of any authorization from the Complainant, The Panel finds that the disputed domain name was registered in bad faith by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and any related service or document.

Regarding the use of the domain name, the Panel agrees with Complainant that the past use of the disputed domain name qualifies as an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s web site by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the web site previously accessible through the disputed domain name.

Hence, the Panel finds that the disputed domain name was registered and is being used in bad faith. Therefore, the Panel finds that the third element of the Policy is fulfilled.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SERVIER-MEDICAL.COM**: Transferred

PANELLISTS

Name **Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION **2021-05-14**

Publish the Decision
