Decision for dispute CAC-UDRP-103689

Case number	CAC-UDRP-103689
Time of filing	2021-04-06 11:52:09
Domain names	wehealthtr.com, wehealthtr.org, wehealthtr.net

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	LES LABORATOIRES SERVIER
Organization	BIOFARMA

Complainant representative

Organization	IP TWINS

Respondent

Name	Dogukan Sokmen

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 names.

IDENTIFICATION OF RIGHTS

The Complainants submitted evidence that they are the registered owners of the following trademarks (hereafter: the "WEHEALTH trademarks"):

• For the Complainant BIOFARMA SAS:
- French trademark registration nr. 4280290 "WEHEALTH", registered on June 15, 2016, in classes 5, 9, 10, 35, 36, 41, 42 and 44; and
- International trademark registration nr. 1329611 "WEHEALTH", valid in, amongst others, the territory of Turkey (i.e., the country where the Respondent is based), and registered on October 5, 2016, in classes 5, 9, 10, and 44.

• For the Complainant LES LABORATOIRES SERVIER SAS:
- EU trademark registration nr. 015850548 "WEHEALTH BY SERVIER", registered on September 20, 2016, in classes 5, 9, 10, 35, 36, 41, 42 and 44;
- French trademark registration nr. 4300433 "WEHEALTH BY SERVIER", filed on September 19, 2016, in classes 5, 9, 10, 35,

36, 41, 42 and 44; and
- International trademark registration nr. 1361896 “WEHEALTH BY SERVIER”, valid in, amongst others, the territories of China, the United States, India, and Russia, and registered on November 11, 2016, in classes 5, 9, 10, and 44.

FACTUAL BACKGROUND

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

The Complainants are both part of the Servier Group. The Servier Group, led by the French pharmaceutical company Servier SAS, is a large French pharmaceutical group, which is active in 149 countries and employs more than 22.000 people throughout the world. The Complainants assert that 100 million patients are treated daily with “Servier medicinal products and generics”. Under the name “WEHEALTH” and/or “WEHEALTH BY SERVIER”, the Servier Group aims to establish partnerships with start-up companies in the domain of digital health.

The Complainants have submitted evidence that they are the registered owner of the WEHEALTH trademarks mentioned above under "Identification of rights".

The Complainants provided evidence that the Complainant BIOFARMA SAS is the owner of the domain names <wehealth.fr> (registered on June 8, 2016) and <wehealth.com> (registered on December 25, 2005). The Complainants further provided evidence that their Australian and Brazilian subsidiaries are the registrants of the domain names <wehealthbyservier.com.au> and <wehealthbyservier.com.br>, both registered on November 14, 2016.

All three disputed domain names were registered on August 25, 2020.

The Complainants have provided evidence that, at the time of filing their complaint, the disputed domain names were not in use.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

1. Preliminary remarks regarding the request of the Complainants for the consolidation of the three domain name disputes, based on Paragraph 10(e) of the Rules

The complaint was jointly filed by BIOFARMA SAS and LES LABORATOIRES SERVIER SAS (together, the “Complainants”).

The Complainants submitted a request based on paragraph 10(e) of the UDRP Rules to consolidate the three domain name disputes in a single complaint.

The Complainants base their request on multiple elements. First, the Complainants have shown that they are both owners of various “WEHEALTH” trademarks (which are similar to the disputed domain names, see part 2 of the decision).

Second, the company Servier SAS, a French multinational pharmaceutical company, acts as the executive director and president of both Complainants. The Complainants argue that they are closely connected to each other, as they belong to the same group (the “Servier Group”). The Complainants claim that they are both affected in a similar fashion by the registration and use of the disputed domain names by the Respondent.

Third, the Complainants argue that they have sufficient reason to believe that all three of the disputed domain names are owned by the Respondent, since the three disputed domain names were registered on the same day, at the same hour, and with the same registrar, using the same WHOIS proxy service. They also share the same second level “wehealthtr”.

Based on the arguments of the Complainants, which are not contested by the Respondent, the Panel grants the request of the Complainants to consolidate the three domain name disputes regarding the disputed domain names <www.wehealthr.com>, <www.wehealthr.org>, and <www.wehealthr.net> into one single procedure, in accordance with Paragraph 10(e) of the Rules.

2. Identical or confusingly similar

The disputed domain names <www.wehealthr.com>, <www.wehealthr.org>, and <www.wehealthr.net> consist of the Complainants’ registered WEHEALTH” trademarks, with the mere addition of letter “R”. There is also the addition of the '.com', ‘.org’ and ‘.net’ suffixes, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark to which a complainant has rights.

The WEHEALTH trademark registrations predate the registrations of the disputed domain names by the Respondent.
The Panel concludes that the disputed domain names are confusingly similar to a trademarks in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

3. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Panel notes that the Complainants contend that the Respondent is not commonly known by the disputed domain names, which all redirect towards empty pages. The Complainants provide evidence that a Google search for the term “wehealth” only shows search results that refer to the Complainants, to the “WEHEALTH” trademarks, and/or the Servier Group. Moreover, the Complainants assert that the Respondent has no trademark rights to the terms “WEHEALTH” or “WEHEALTHR”, and provide evidence that searches for “WEHEALTH” in the WIPO and Turkish trademark databases show no results other than the “WEHEALTH” trademarks (Turkey being the Respondent’s home country).

Second, the Complainants contend that they did not find any indication of preparation by the Respondent to use the disputed domain names in connection with a bona fide offering of goods or services. The Complainants provide evidence that, at the

time of filing their initial complaint, the disputed domain names were not in use.

Third, the Complainants assert that the Respondent has never been granted authorization to use the WEHEALTH trademarks of the Complainants. The Complainants assert that the Respondent is not commercially linked to the Complainants.

Fourth, the Complainants assert that the registration and the (extensive) use of the WEHEALTH trademarks predate the registration of the disputed domain names by the Respondent.

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

The Respondent does not appear to have any rights or legitimate interests associated with the WEHEALTH trademarks, nor with variations thereof such as “WEHEALTHR”.

There is no evidence that the Respondent is commonly known by the WEHEALTH trademarks, or by variations thereof such as “WEHEALTHR”. The Respondent does not seem to have any consent to use these trademarks or variations such as “WEHEALTHR”. The disputed domain names do not correspond to the name of the Respondent.

There is no evidence to show that the Respondent may have used the disputed domain names for any bona fide offering of goods or services of its own. Also, there is no evidence to show any demonstrable preparations to use the domain names or a name corresponding to the disputed domain names in connection with such bona fide offering of goods or services. There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names within the meaning of paragraph 4(a)(ii) of the Policy.

4. Bad faith registration and use

The Complainant asserts that the Servier Group and the WEHEALTH trademarks are well-known. The Complainant also asserts that the WEHEALTH trademarks are distinctive. The Complainant submitted evidence that several press releases, communications and news articles regarding the WEHEALTH trademarks have been released internationally, prior to the registration of the disputed domain names. The Complainants submitted evidence that the Servier Group is also active under the WEHEALTH trademarks in Turkey, which is the home country of the Respondent. Furthermore, the Complainants assert that the term “WEHEALTH” is a made-up “fanciful” term, so that the Respondent could not have registered the disputed domain names based on a purported dictionary meaning or based on the purported generic character of the term “wehealth”. In other words, the Complainants contend that it is highly unlikely that the Respondent would have registered the disputed domain names without knowledge of the Complainants’ WEHEALTH trademarks. The Complainants further contend that the fact that the Respondent registered domain names that are confusingly similar to their distinctive and well-known trademarks indicates that the Respondent had the intention of selling them to the Complainants in excess of out-of-pocket costs directly related to the domain names. The Complainants contend that the disputed domain names are currently inactive. The Complainants contend that the fact that the disputed domain names are currently inactive is evidence of bad faith use.

The Respondent did not dispute these claims.

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainants and their activities, and of the existence of the Complainants’ WEHEALTH trademarks and the scope of these trademarks. The Panel points to the fact that the Complainant BIOFARMA SAS has trademark rights to the term “WEHEALTH” in the home country of the Respondent (i.e. Turkey), and that the Complainants have proven that the Servier Group is indeed active in Turkey. The term selected by the Respondent for the disputed domain names (“WEHEALTHR”)

seems to have no meaning in any language (including languages in the Respondent's home country) and seems only selected for its similarity to the Complainants' registered WEHEALTH trademarks. Furthermore, the registration of the Complainants' WEHEALTH trademarks pre-date the registration of the disputed domain names. The disputed domain names are almost identical to the Complainants' WEHEALTH trademarks, with the exception that the disputed domain names add the letter "R". The Panel notes that, as the Complainants point out, the Complainants' WEHEALTH trademarks consist of a made-up term which is not to be found in dictionaries. This makes it even more unlikely that the Respondent would have chosen the term "WEHEALTHR" independently from the Complainant's WEHEALTH trademarks. In light of this, it seems unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain names at the time of their registration and use.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the WEHEALTH trademarks of the Complainants in mind when registering and subsequently using the disputed domain names.

For all of the reasons set out above, the Panel determines that the disputed domain names were registered and are being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WEHEALTHTR.COM**: Transferred
2. **WEHEALTHTR.ORG**: Transferred
3. **WEHEALTHTR.NET**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2021-05-17

Publish the Decision