

Decision for dispute CAC-UDRP-104421

Case number CAC-UDRP-104421

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Domain names servierc.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization LES LABORATOIRES SERVIER

Complainant representative

Organization IP TWINS

Respondent

Organization Fundacion Comercio Electronico

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 consisting of the term "SERVIER", including but not limited to:

- i) EU trademark SERVIER nr. 004279171, dated February 7, 2005 at classes 05, 35, 41, 42 and 44;
- ii) International trademark SERVIER nr. 814214, dated August 5, 2003 at classes 05, 35, 41, 42 and 44; and
- iii) International trademark SERVIER nr. 571972, dated May 29, 1991 at classes 01, 03 and 05.

The Complainant is also the holder of numerous domain names incorporating its trademarks "SERVIER", such as:

- i) <servier.com> with expiration date December 28, 2023;
 - ii) <servier.fr> with expiration date May 3, 2022.
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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. The Complainant is

present in 150 countries worldwide, 100 million of patients are treated each day with the group's various medicines. 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.

In accordance with the Complainant, "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 Complainant owns several SERVIER trademarks and domain names.

On February 8, 2022, the Respondent "Fundacion Comercio Electronico", a company located in Panama, registered the disputed domain name <servierc.com>. The Complainant argues that the disputed domain name is at the very least confusingly similar to Complainant's "SERVIER" trademarks.

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

The disputed domain name hosts a parking page and is offered for sale (minimum offer 899USD) on <sedo.com>. Consequently, the Respondent cannot claim that "Servier" is a descriptive term which he needs to use during his business activities to describe his goods and services.

The above facts asserted by the Complainant are not contested by the Respondent.

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

- (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 are being used in bad faith.

The Panel has reviewed in detail the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS.

Paragraph 4(a)(i) of the Policy establishes the obligation of Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term SERVIER for pharmaceutical and veterinary preparations, medical and clinical studies & medical information, among many others. The Complainant's trademarks were registered prior to February 8, 2022, the creation date of the disputed domain name.

In the current case, the disputed domain name consists of the SERVIER trademark followed by the word "C". In assessing confusing similarity, the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, as it incorporates the entirety of the SERVIER trademark, and differs from such mark merely by adding the word "C".

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to Complainant's mark.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it with relevant evidence demonstrating rights or legitimate interests in the domain name; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In this vein, Paragraph 4 (c) provides with circumstances which could prove rights or legitimate interest in the disputed domain name on behalf of the Respondent such as:

- (i) before any notice to Respondent of the dispute, Respondent is using or provides with 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) The Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial 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.

In accordance with the Complaint, the Complainant has not granted any authorization to the Respondent to use their SERVIER trademarks. The fact that the Respondent did not reply to the Complaint gives an additional indication that Respondent lacks rights or legitimate interest since the Respondent did not provide with information about possible rights.

From the information provided by the Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the disputed domain name.

In fact, the Respondent's name Fundacion Comercio Electronico provided in the Registrar's verification dated March 15, 2022 is all what it links the disputed domain name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the disputed domain name.

In terms of the evidence provided by the Complainant, the disputed domain name is currently used to host a pay per click website with generic terms. Past Panels have found that the use of a domain name to host a page comprising pay per click links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host pay per click links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark.

(See Question 2.7. of WIPO Panel Views on Selected UDRP Questions, Third Edition, "WIPO Overview 3.0.").

The Complainant has provided with an argument mentioning that "SERVIER" is a surname that has no specific meaning either in the French language and, to the Complainant's knowledge, in any other language. Furthermore, the Complainant has also provided with trademark registrations under the term "SERVIER". In this regard and absent of Respondent's reply, the Panel is of the opinion that the Respondent is trading off the Complainant's trademark by using it linked to a website with pay per click advertisement regardless of whether the links are related to generic words such as "Services".

Furthermore, the Complaint has also provided with evidence that the disputed domain name is offered for sale at sedo.com for a minimum offer of 899USD. This is an additional indication that Respondent has a clear intent for commercial gain and therefore, this cannot be considered as a fair use.

In light of the reasons above mentioned, the Panel concludes that the Respondent does not have rights or legitimate interest in the disputed domain name and the Complainant has satisfied the second element of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the disputed domain name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which 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 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 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 the Respondent's website or other on-line 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.

For the current case, the evidence at hand confirms that Complainant's SERVIER trademark is distinctive and it has a strong reputation in the pharmaceutical industry. Furthermore, the Complainant provided with the results of a Google Search report for the terms "SERVIER" and "SERVIERC" where in both cases the top-ranked results relate to the Complainant. Based on those elements, the Panel is of the opinion that Respondent knew or should have known that its domain name registration would be identical or confusingly similar to the SERVIER trademarks.

Furthermore, the Complainant provided with evidence showing that the disputed domain name is currently used to host a pay per click website with generic links. It is well established at different UDRP Panel resolutions that the Respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. (see Question 3.5. of the WIPO Overview 3.0.).

From the Panel's perspective, the below mentioned elements demonstrate that the Respondent acquired the disputed domain name with the intention to attract, for commercial gain, Internet users to the Respondent's website or other on-line 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.

In addition, the Complainant has submitted evidence showing that the disputed domain name is offered for sale at sedo.com for a minimum offer of 899USD.

In terms of the current UDRP practice, previous Panels have found that registration of a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). However, there are some elements which can infer that the disputed domain name was registered for the bad-faith purpose of selling it; e.g. typo of a famous mark. In this regard, the Panel is convinced that the Respondent's aim in registering the disputed domain name was to profit from the Complainant's trademark; in particular taking into account the Respondent's likely knowledge of the Complainant's rights as well as the distinctiveness of the Complainant's trademark.

Last but not least, the Complainant indicated that the Respondent has already been involved in the registration of domain names containing the trademark of third parties and included as evidence the WIPO Case Nr. D2021-0568 regarding the disputed domain names <serenaandlily.com>, <serenaandilily.com>, and <serenaanndlily.com>. In this vein, UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registrations, however, Panels have been reluctant to find a pattern of abuse where a single UDRP case merely contains two domain names registered simultaneously by the same respondent directed at a single complainant mark. It might be true that the Respondent has registered more domain names containing the trademark of third parties and it might also true that the Respondent has been involved in additional UDRP cases, however, the Complainant only provided with one evidence which make difficult for the Panel to take a decision regarding the pattern of conduct of abusive registrations by the Respondent but it does not change the overall impression of Respondent's bad faith conduct.

In light of the evidence presented to the Panel, including: a) the likelihood of confusion between the disputed domain name and the Complainant's SERVIER trademarks, b) the lack of reply to this Complaint by Respondent, c) the fact that the disputed domain name is being used for a pay per click website and d) the disputed domain name is offered for sale at sedo.com for a minimum offer of 899USD, e) The Respondent has been involved in at least one additional UDRP case, the Panel draws the inference that the disputed domain name was registered is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SERVIERC.COM**: Transferred

PANELLISTS

Name	Victor Hugo Garcia Padilla, LL.M.
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DATE OF PANEL DECISION 2022-04-29

Publish the Decision
