

Decision for dispute CAC-UDRP-104547

Case number CAC-UDRP-104547

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Domain names servierpharm.com

Case administrator

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

Complainant

Organization LES LABORATOIRES SERVIER

Complainant representative

Organization IP TWINS

Respondent

Name Tims Akins

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 the following trademarks:

- SERVIER (word), EUTM registration No. 4279171, filed on 2 February 2005, and registered on 15 October 2007, duly renewed, covering goods and services in classes 5, 35, 41, 42 and 44;
- SERVIER (word), international registration No. 814214 of August 8, 2003, duly renewed, covering goods and services in classes 5, 35, 41, 42, and 44;
- SERVIER (word), international registration No. 571972 of May 29, 1991, duly renewed, covering goods in classes 1, 4 and 5;
- SERVIER (word), international registration No. 549079 of January 19, 1990, duly renewed, covering goods in classes 1, 3, 5, 10, 16, 35, 41 and 42.

The Complainant also owns numerous domain names incorporating the SERVIER trademark, among which <servier.com>

and <servier.fr>.

FACTUAL BACKGROUND

The Complainant is the largest independent French pharmaceutical group. The Complainant is present in 150 countries worldwide. It was founded in 1954 by Dr. Jacques Servier, who took over a small pharmaceutical company using his own surname as the company name, business name, trademark and domain name of the company.

The disputed domain name was registered on 18 February 2022 and resolves to an error page.

PARTIES CONTENTIONS

The Complainant maintains that the disputed domain name is confusingly similar to its SERVIER mark for the following reasons.

The domain name <servierpharm.com> incorporates the trademark SERVIER followed by the abbreviation “pharm”, which stands for “pharmacy” or “pharmaceuticals”. A domain name that wholly incorporates a third party’s trademark is confusingly similar to that trademark for the purposes of the Policy. The addition of the abbreviation “pharm”, which is a term deprived of distinctive character and referring to the Complainant’s activity field, enhances the risk of confusion.

The Complainant further maintains that the Respondent lacks rights and legitimate interests in the disputed domain name.

In particular, the Complainant has no relationship with the Respondent, and the latter is not a licensee of the Complainant nor is in partnership with it. The Complainant never authorised the Respondent to make use of the trademark SERVIER, including as part of a domain name.

The Respondent is not known by the disputed domain name. A trademark search conducted on the term “Servier” failed to show any SERVIER trademark in the Respondent’s name. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or in a legitimate noncommercial or fairly manner, given that the disputed domain name resolves to an error page.

Lastly, the Complainant contends that the disputed domain name has been registered and is being used in bad faith.

The trademark SERVIER corresponds to the surname of the founder of the Complainant and is a fanciful, arbitrary and distinctive term. The combination of the distinctiveness of the Complainant’s trademark and its extensive use across the world makes it unlikely that the Respondent was not aware of the Complainant and of its trademark at the time of the registration of the disputed domain name. In addition, the fact that the disputed domain name also includes the abbreviation “pharm”, which corresponds to the Complainant’s field of activity, shows that the Respondent had the Complainant’s trademark in mind when it registered the disputed domain name.

Furthermore, according to the Complainant, the fact that the disputed domain name resolves to an error page cannot prevent a finding of bad faith, in particular when the Complainant’s trademark is highly distinctive and enjoys reputation, the Respondent failed to submit a Response, and any good faith use of the disputed domain name is implausible.

The Respondent did not reply to the Complainant's contentions and therefore failed to submit a Response.

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

1. Confusing similarity of the disputed domain name to the Complainant's trademark

The Panel agrees that the disputed domain name is confusingly similar to the Complainant's trademark SERVIER as it includes it entirely and is followed by the abbreviation "pharm", which stands for "pharmacy" or "pharmaceutical". This additional term does not prevent a finding of confusing similarity as the trademark SERVIER is clearly recognizable within the disputed domain name and the abbreviation "pharm" refers to the Complainant's business field (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

2. No rights or legitimate interests

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a 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, a complainant is generally deemed to have satisfied paragraph 4(a) (ii) of the Policy.

In this case, the Complainant brings forward the following elements:

- The Complainant did not grant any license or authorization in respect of the disputed domain name to the Respondent;
- The Complainant has no relationship whatsoever with the Respondent;
- The Respondent is not commonly known under the disputed domain name, nor does it have any trademark rights on such name.

In addition, the disputed domain name redirects to an error page. Therefore, there is no indication of any use of or preparations to use the disputed domain name in relation to a bona fide offering of goods or services. Lastly, lacking any authorisation from the Complainant, the use of a domain name, incorporating the Complainant's distinctive trademark and uniquely associated to the Complainant, cannot amount to a legitimate or fair use of the domain name

In light of the above, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Since the Respondent has not proved otherwise, the Panel is satisfied that also the second condition of the Policy is met.

3. Bad faith

In relation to bad faith, the Panel shares the Complainant's view that the Respondent was well aware of the Complainant's mark and activity at the time of the registration of the disputed domain name. Indeed, the Complainant's trademark is uniquely associated to the Complainant, as it corresponds to the surname of its founder and consists in a fanciful word deprived of any meaning. Furthermore, the use of the SERVIER mark is longstanding and widespread, which entails that the mark enjoys reputation (as already determined by previous UDRP panels, see among others, WIPO Case No. D2016-2252, Les Laboratoires Servier v. Ping Chen, Chen Ping; WIPO Case No. D2019-1085, Les Laboratoires Servier v. Christina Ramsay). Lastly, not only the disputed domain name incorporates the Complainant's trademark, but it also contains the suffix "pharm", which refers to the Complainant's activity. It is therefore more than clear that the Respondent was well aware of the Complainant's trademark at the time it registered the disputed domain name. The incorporation of a well-known third party's trademark in a domain name without rights and legitimate interests amounts to registration of the said domain name in bad faith.

With respect to use in bad faith, the Panel notes that the disputed domain name leads to an error page. The fact that the disputed domain name is currently not active cannot preclude a finding of bad faith especially when the following circumstances apply: (i) the complainant's mark is distinctive and enjoys reputation; (ii) the respondent fails to submit a response or to provide any evidence of actual or contemplated good faith use; (iii) the respondent is concealing his identity or providing false contact details; (iv) there is no plausible good faith use that the respondent could make of the domain name under challenge.

In the instant case, as mentioned above, the Complainant's trademark enjoys reputation, the Respondent failed to submit a Response to the Complaint and to demonstrate its good faith use of the disputed domain name, and concealed his identity behind a privacy service, also providing incorrect contact details at the time of the registration of the disputed domain name. In this respect, the Panel has ascertained that at least the Respondent's address listed in the WhoIS of the disputed domain name is inaccurate. Furthermore, the disputed domain name reproduces the Complainant's trademark coupled with the prefix "pharm", which refers to the field of activity of the Complainant. Therefore, through the registration and use of the disputed domain name, the Respondent is impersonating the Complainant and is misleading the Internet users as to the origin of the disputed domain name in order to attract them to the Respondent's website or other online location for some kind of illegitimate reason. Even if in the future the Respondent starts using the disputed domain name it is not plausible that such use would ever be in good faith.

For all the reasons set forth above, the Panel concludes that the disputed domain name was registered and is been used in bad faith. As such, also the third and last condition under the Policy should be considered as met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SERVIERPHARM.COM**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION 2022-06-10

Publish the Decision
