

Decision for dispute CAC-UDRP-105262

Case number	CAC-UDRP-105262
Time of filing	2023-03-07 06:09:52
Domain names	servierpharmaceutical.com

Case administrator

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

Organization	LES LABORATOIRES SERVIER
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Complainant representative

Organization	IP TWINS
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Respondent

Organization	Money Mata (Seragon Pharmaceutical)
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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

According to the evidence submitted by Complainant, Complainant is the owner of multiple trademarks, including European Union trademark SERVIER n° 004279171, registration date 15 October 2007.

FACTUAL BACKGROUND

According to the information provided Complainant is part of the Servier Group: the largest French pharmaceutical group on an independent level and the second largest pharmaceutical French group in the world. The group is active in 150 countries and employs more than 21,000 people throughout the world. The US subsidiary of Complainant is named Servier Pharmaceuticals LLC.

The disputed domain name <servierpharmaceutical.com> was registered on 2 February 2023. The disputed domain name does not resolve to an active website.

The trademark registration of Complainant has been issued prior to the registration of the disputed domain name.

PARTIES CONTENTIONS

COMPLAINANT:

Complainant contends that the disputed domain name is confusingly similar to Complainant's SERVIER trademark. Indeed, the disputed domain name contains the SERVIER trademark of Complainant in its entirety. Furthermore, the term "pharmaceutical" associated with "servier" within the disputed domain name only aggravates the risk of confusion between the latter and Complainant's trademark SERVIER. Indeed, the term "pharmaceutical" directly refers to Complainant's area of business, in which Complainant is well-known. The use of this specific term also makes the disputed domain name extremely close to Complainant's US subsidiary company name "Servier Pharmaceuticals LLC"

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Complainant submits that Respondent is not commonly known by the disputed domain name, which redirects towards an error page. Complainant's verifications did not allow to find any clue of preparation to use the disputed domain name in connection with a bona fide offering of goods or services, as it redirects towards an error page. Respondent has never been granted authorization, license or any right whatsoever to use the trademark of Complainant. Respondent is not commercially linked to Complainant.

According to Complainant the disputed domain name is registered and is being used in bad faith. Complainant asserts that the Servier Group is so widely well-known that it is very unlikely that Respondent ignored the rights of Complainant on the trademarks SERVIER. This is especially true since Respondent used the "pharmaceutical" word in the disputed domain name, which specifically refers to the business area of Complainant.

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

In addition, Complainant submits that it sees no possible way whatsoever in which 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 towards an error page. According to Complainant non-use of a domain name (including a blank or "coming soon" page) does not prevent a finding of bad faith registration and use under the doctrine of passive holding.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's SERVIER trademark. Many UDRP

decisions have found that a disputed domain name is confusingly similar to a complainant’s trademark where the disputed domain name incorporates the complainant’s trademark or the principal part thereof in its entirety. The addition of the descriptive term “pharmaceutical” in the disputed domain name may be disregarded especially in view of the fact that Complainant is a pharmaceutical company. The generic Top-Level Domain (“gTLD”) “.com” is also disregarded under the first element confusing similarity test.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. In particular the Panel takes into account the undisputed submission of Complainant that the disputed domain name does not resolve to an active website but only to an error page. Respondent did not submit any response. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. The trademarks of Complainant have been existing for a long time and are well-known. Respondent knew or should have known that the disputed domain name included Complainant’s trademark. The Panel notes that the disputed domain name does not resolve to an active website. It is well established that non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding (see section 3.3. of the WIPO Overview 3.0). This indicates, in the circumstances of this case, that Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **servierpharmaceutical.com**: Transferred

PANELLISTS

Name	Dinant T.L. Oosterbaan
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DATE OF PANEL DECISION 2023-04-03

Publish the Decision