

## Decision for dispute CAC-UDRP-105634

Case number CAC-UDRP-105634

Time of filing 2023-07-21 08:42:47

Domain names us-servier.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization Les Laboratoires Servier

### Complainant representative

Organization IP TWINS

### Respondent

Name James Andrew

#### 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 and its subsidiaries claim that they are the holders of dozens of trademark registrations on the term "servier" across the world. The SERVIER trademarks are intensively used on all continents and a non-exhaustive listing is provided as below:

- EU trademark SERVIER #004279171, dated February 7, 2005, duly renewed and designating goods and services in international classes 05, 35, 41 42 and 44;
- International trademark SERVIER #814214, dated August 5, 2003, duly renewed, and designating goods and services in international classes 05, 35, 41, 42 et 44;
- International trademark SERVIER (device) #571972, dated May 29, 1991, duly renewed and designating goods in international classes 01, 03 and 05;
- International trademark SERVIER (device) #549079, dated January 19, 1990, duly renewed and designating goods and services in international classes 01, 03, 05, 10, 16, 35, 41 and 42;
- US trademark SERVIER (device) #5841954, dated May 4, 2015 and designating goods and services in international class 05.

The above-mentioned Trademark registrations all predate the registration of the disputed domain name by the Respondent.

#### FACTUAL BACKGROUND

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

The Complainant LES LABORATOIRES SERVIER 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. 100 million patients are treated daily with Servier medicinal products and generics. Servier Group key figures are provided to this Complaint and available at <https://servier.com/en/servier-group/servier-key-figures/> . It should be noted that the Complainant has a US-based subsidiary named Servier Pharmaceuticals LLC. Its website is available at <https://www.servier.us/> . The main website of the Complainant is available at <https://servier.com/>.

The Respondent is an individual located in Churchton MD, United States.

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PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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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).

First, the Complainant claims rights in the SERVIER mark through its trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See *Avast Software s. r. o. v Milen Radumilo*, 102384, (CAC 2019-03-12).

Second, the Complainant claims that the disputed domain name contains the SERVIER trademark of the Complainant in its entirety and the term "us" associated with "servier" within the disputed domain name only aggravates the risk of confusion between the latter and the Complainant's trademark SERVIER. Indeed, "us" is widely understood as the ISO code for the United States of America, where the Complainant has a subsidiary (see <https://www.servier.us/>).

The Panel accepts that the prominent part of the disputed domain name is identical to Complainant's trademark SERVIER, and the hyphen "-" and the ".com" generic top-level domain ("gTLD") are irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of paragraph 4(a)(i) of the Policy, see *CALZATURIFICIO BUTTERO SRL v YANG CHAO WEI*, 103520 (CAC 2021-02-23).

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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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). More specifically, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain names, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See *PepsiCo, Inc. v Smith power production*, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

First, the Complainant contends that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant in any way and does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain names by the Complainant.

Second, the Complainant did not 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 error pages.

The Panel is of the view that successfully registering a domain name does not automatically claim rights or legitimate interests to a domain name. Instead, paragraph 4(c) of the Rules listed some common circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to the Respondent of the dispute, Respondent's use of, or 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) Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if

Respondent has acquired no trademark or service mark rights; or

(iii) 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.

The Panel notes that the disputed domain name does not resolve to any meaningful content and is being passively hold by the Respondent. The use of the disputed domain name appears to be not in connection with a bona fide offering of goods or services.

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names. The burden of proof has been shifted to the Respondent to prove that it has right or legitimate interests to the disputed domain name. However, the Respondent has not submitted any response to rebut the assertion within the required period of time.

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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#### 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).

Firstly, the Complainant reiterates that the Servier Group is so widely well-known that it is very unlikely that the Respondent ignored the rights of the Complainant on the trademarks SERVIER. To the best of the Complainant's knowledge, 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.

Second, the Complainant performed a reverse-whois search on the Respondent email address and found that the Respondent registered Multiple domain names composed of us-(trademark).com. The Complainant contends that these findings indicate a pattern of conduct from the Respondent consisting in the registration of domain names containing third-party trademarks. This is another indication of the bad faith of the Respondent in the Registration of us-servier.com.

Third, the Complaint further contends that the disputed domain name is being passively hold by the Respondent.

The Panel is of the view that in order to successfully prove a domain name has been registered and/or used in bad faith, we should consider the following common scenarios under paragraph 4(b) of the Policy:

(i) circumstances indicating that Respondent has registered or Respondent 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 Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) 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) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site 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 your web site or location or of a product or service on Respondent's0 web site or location.

In the present case, Respondent has obviously 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. It is well evinced by the cybersquatting pattern and the passive holding of the disputed domain name. See Novartis AG v. Hua De Wang, 104564 (CAC 2022-06-08) and ARCELORMITTAL v. bill chill chill, 105631 (CAC 2023-08-16).

For the foregoing reasons, the Panel finds the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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#### 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.

#### PRELIMINARY FINDINGS - LANGUAGE OF PROCEEDING:

The Panel notes that the language of the Registration Agreement is Japanese as confirmed by the Registrar. The official Complaint was submitted in English and no Response was received within the required period of time. Pursuant to paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative

proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests to use English as the language of proceeding, with the arguments that the Complainant is not able to effectively communicate in Japanese. Being a French entity, the Complainant is not in position to conduct these proceedings in Japanese language without a great deal of additional expense and delay due to the need for translation of the Complaint. English language is not the native language of the Complainant or its representative, therefore the Complainant contends that choosing English as the language for the current proceeding would not give him unfair advantage over the Respondent. Moreover, the Respondent resides in the USA and is very likely to be perfectly fluent in the English language.

Having considered the circumstances, it is reasonable to infer that being an individual located in the United States, the Respondent should at least be able to either read the Complaint in English language or voice out that he can only understand Japanese language. However, no response has been submitted by the Respondent within the required period of time. Panel believes that it would be fair to both parties to use English as the language of proceeding and it can also uphold the principle of UDRP being a swift dispute resolution process. On this basis, the Panel determines that the language requirement has been satisfied, and decides that the language of proceeding to be English.

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PRINCIPAL REASONS FOR THE DECISION

Having established all three elements required under the UDRP Policy, the Panel concludes that relief shall be granted.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Accepted**

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

1. **us-servier.com**: Transferred

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**PANELLISTS**

Name	<b>Mr Paddy TAM</b>
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DATE OF PANEL DECISION **2023-08-19**

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**Publish the Decision**

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