

Decision for dispute CAC-UDRP-105774

Case number **CAC-UDRP-105774**

Time of filing **2023-09-13 09:23:59**

Domain names **satylia.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **TargEDys**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Joe Harris**

Respondent representative

Name **Joe Harris**

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 relies on its registered trademarks, in territories around the world, including the following:

Mark	Territory	Registration No.	Application date	Registration date	Class
SATYLIA (word)	EM	018162737	06 December 2019	22 May 2020	5

SATYLIA (word)	WIPO	1539494	01 June 2020	01 June 2020	5
-------------------	------	---------	--------------	--------------	---

FACTUAL BACKGROUND

On February 21, 2023, the Respondent registered the disputed domain name <satylia.com>.

On September 08, 2023, the Complainant filed a complaint concerning the disputed domain name.

On October 02, 2023, the Respondent timely filed its response.

PARTIES CONTENTIONS

COMPLAINANT:

Key aspects of the Complainants' contentions are summarized below.

Complainant's Background

The Complainant is a commercial-stage French biotech specialized in the development of nutraceutical solutions for the control of appetite through microbiome interventions. The company is the result of more than 15 years of research on the microbiota, conducted within academic laboratories.

The Complainant uses the trademark SYMBIOSIS® SATYLIA® for its food supplement for adults, formulated with Zinc, Chromium and the unique strain *Hafnia alvei* HA4597®.

Registration of the Disputed Domain Name

On February 21, 2023, the Respondent Joe Harris - located in South Korea - registered the disputed domain name <satylia.com>. The disputed domain name resolves to a parking page with commercial links, and is offered for sale on different sites respectively for a minimum price of USD \$4,950 and for USD \$27,800 via the domain name marketplace Afternic.

First UDRP Element - Disputed Domain Name is Identical to Complainant's Trademark

The Complainant asserts that the disputed domain name is identical to its SATYLIA trademarks, as it reproduces the mark in its entirety without any changes thereto, and the inclusion of the top level TLD ".com" should be disregarded.

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the Disputed Domain Name

The Complainant contends that the Respondent is not commonly known as the disputed domain name, but rather is identified in the Whois as "Joe Harris". The Complainant asserts the Respondent is not related in any way to the Complainant, and the Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant claims that the use of the disputed domain name to resolve to a parking page with commercial links is not a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the Respondent is itself commercially profiting from the click through fees.

Lastly the Complainant contends that the general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interests.

Third UDRP Element – The Domain Name was Registered and is Being Used in Bad Faith

The Complainant asserts that because (i) its SATYLIA trademark has no dictionary meaning, (ii) the trademark was registered several years before the creation of the disputed domain name, and (iii) Google search results of the term "SATYLIA" point to the Complainant's products; the Respondent either knew or should have known about the Complainant and its SATYLIA trademark at the time of registration.

The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith, because the disputed domain name resolves to a parking page with commercial links.

Further, the Complainant contends because the disputed domain name is offered for sale for USD \$27,800 this evinces bad faith registration and use in circumstances where the Respondent has registered the disputed domain name only in order to sell it back in excess of out-of-pockets costs.

RESPONDENT:

In response to Complaint, Respondent filed a short response as follows:

“The defendant bought satylia.com. from kookmin@gmail.com for USD 7,300.

The defendant is preparing a clothing mall with satylia.com now, but the opening is only being delayed due to various economic circumstances.

The data from afternic and bgrou submitted by the plaintiff looks like the old data which was made by kookmin@gmail.com.

The defendant has requested the removal of old data of afternic and kookmin@gmail.com

The defendant would like to negotiate amicably with the plaintiff.

Furthermore, the defendant is not familiar with English documents. If possible, I ask that your court order the plaintiff to provide notarized Korean translations of the complaint, appendix, exhibits and etc.”

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

LANGUAGE OF PROCEEDING

According to Paragraph 11 in the Rules for Uniform Domain Name Dispute Resolution Policy, (the “Rules”) “...the language of 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.”

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 respective registration agreement is English. Thus, the default language of the proceedings is English, unless otherwise agreed by the parties or the panel determines that there is a compelling reason to deviate from English. The panel should also take into consideration the goal of expeditious proceedings, in accordance with its general powers enumerated in Paragraph 10 of the Rules.

In its response - in the English language - Responded requested translations of the proceedings into Korean:

“Furthermore, the defendant is not familiar with English documents. If possible, I ask that your court order the plaintiff to provide notarized Korean translations of the complaint, appendix, exhibits and etc.”

In this instant case there are compelling reasons for retaining the proceedings in English including:

- There is evidence that, contrary to its assertions, the Respondent can understand the language of the Complaint, because it submitted a response to the Complaint in readily understandable English;
- The disputed domain name contains the roman script, and uses the generic TLD .com rather than being in Korean characters using Internationalized Domain Names (IDNs) or using a Korean ccTLD;
- Content on the website associated with the disputed domain name is in English;
- It would cause unwarranted delays and expenses against the principles of efficiency and expediency if the Complainant would be required to translate the complaint.

Thus, the Panel concludes it is appropriate to continue these proceedings in the default manner, that is, in accordance with the language of the registration agreement which is English.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY

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 is being used in bad faith.

The Panel has examined 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

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term SATYLIA in class 05 in several territories around the world. Such trademark rights were created and registered some years prior to February 21, 2023, the creation date of the disputed domain name. The disputed domain name contains the Complainant's SATYLIA mark in its entirety, with no changes or additions other than addition of the gTLD ".com". A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its SATYLIA trademark such that it has standing under the Policy.

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 identical to Complainant's mark for the purposes of this proceeding.

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

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

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; see, for example, WIPO Overview 3.0, section 2.1 ("While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."). However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

As a preliminary matter, the Complaint confirms that it has no relationship with the Respondent, thus the Respondent has not been conferred with any rights relating to the Complainant's SATYLIA trademark.

Paragraph 4(a)(ii) of the Policy contemplates an examination of the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out a list of circumstances through which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your 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". Here, the only evidence regarding the use of the disputed domain name is a screenshot showing that it resolved to a page with pay-per-click ("PPC") commercial links. The PPC links shown in the screenshot of the disputed domain name are not related in any way to the term "SATYLIA", but rather are seemingly random unrelated terms such as, for example, "LSAT Analytical Reasoning", "Mathematics Test" and "Psychometric". As described in section 2.9 of WIPO Overview 3.0: "Panels have recognized that the use of a domain name to host a page comprising PPC 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 PPC 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." Here, Complainant contends, and Respondent does not deny, there is no dictionary word or phrase that relates to the disputed domain name. Moreover, there is no apparent link between the PPC links and term "SATYLIA". Whatever the genesis of the PPC links displayed on the website associated with the disputed domain name, Panels have routinely held respondents to be responsible for the content hosted on the pages associated with their domain names (see WIPO Overview 3.0 section 3.5). In conclusion, the use of the website for PPC links in this case does not rise to the level of a bona fide offering of good or services because the links have no relation to the term "SATYLIA", which has no dictionary meaning.

The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. The Complainant - supported by evidence submitted by the Registrar - has made its prima facie case showing that the name used by the Respondent in the Whois record for the disputed domain name is "Joe Harris". The Respondent has not denied or refuted this point. The name "Joe Harris" has no similarity to the term "SATYLIA" as used in the disputed domain name. No other evidence in the case file suggests that the Respondent is commonly known by the disputed domain name or that it has acquired any relevant trademark rights. As such, this second circumstance that could demonstrate legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's SATYLIA trademark. According to the content shown in the screenshot as submitted, none of the accepted categories of fair use - such as news reporting, commentary, political speech, education etc - are found to apply. Accordingly, the Panel concludes there is no legitimate non-commercial or fair use of the disputed domain name by the Respondent.

Accordingly, the Complainant has sufficiently made out its prima-facie case on the second element of the Policy. The burden of proof is therefore shifted to the Respondent to rebut the Complainant's case.

In its rebuttal against Complainant's claims that Respondent lacks rights or legitimate interests, Respondent asserts that it purchased the domain for USD 7,300 and "is preparing a clothing mall with satylia.com now, but the opening is only being delayed due to various economic circumstances".

While the Respondent claims to be preparing to use the disputed domain name in association with a clothing mall, this bald assertion, unsupported by any evidence whatsoever, is insufficient to constitute demonstrable preparations to use under the Policy. The Respondent failed to provide any evidence which could have added weight to its claimed intended use, such as evidence of business formation related to the clothing mall, evidence of credible investment in marketing materials for the clothing mall, proof of a genuine - and not pretextual - business plan utilizing the disputed domain name for a clothing mall etc. As noted, not a scintilla of evidence was provided by the Respondent (See, WIPO Overview 3.0 section 2.2, "If not independently verifiable by the panel, claimed examples of use or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence."). Due to lack of any credible evidence from the Respondent to rebut the Complainant's successful prima facie case, the Panel therefore concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

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

The Panel concludes that the requirements of 4(a)(iii) of the Policy have been made out by the Complainant such that it establishes the Respondent registered and used the disputed domain name in bad faith.

This third element of the Policy requires Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(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 the 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 or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith in general (ie under paragraph 4(a)(iii) of the Policy), and specifically with respect to paragraph 4(b)(i) and 4(b) (iv) as set out below.

With respect to paragraph 4(b)(i), the Complainant’s evidence shows the disputed domain name was offered for sale at Afternic for a “Buy Now” price of USD \$27,800, and at the B Group website for a minimum offer price of USD \$4,950. The Respondent claims – without any supporting evidence – that it purchased the disputed domain name for \$7,300. Further, the Respondent – also without evidence – claims that the sales listings for the disputed domain name should be attributed to the prior owner of the disputed domain name, noting it its response, “The data from afternic and bgrouop submitted by the plaintiff looks like the old data which was made by kookmin@gmail.com.” Given the lack of evidence of bona-fides, and the self-serving nature of the Respondent’s claims, the Panel accords low weight to the Respondent’s claims in this respect.

Notwithstanding the Respondent’s foregoing claims, the evidence of targeting by the Respondent is compelling. The disputed domain name comprises of Complainant’s non-dictionary and distinctive SATYLIA mark. According to evidence submitted by the Complainant, a Google search for the term “SATYLIA” yields results all pointing to the Complainant’s SYMBIOSIS SATYLIA branded products. According to the Respondent’s own submissions, it purchased the disputed domain name for \$7,300. Many panels have placed a duty of reasonable investigation upon respondents, particularly those in the business of buying and selling domain names. \$7,300 is a significant sum for a domain name purchase relating to a non-dictionary 7-letter string. As such the Panel finds a prospective buyer of such a domain name could reasonably be expected to undertake – at minimum – a quick Google search before finalizing the purchase. Here, the Respondent could have performed a Google search prior to purchasing and would have been immediately made aware of the Complainant and its marks. Further, the Respondent has not disclaimed knowledge of the Complainant, nor provided any evidence of a demonstrable preparations to use the disputed domain in connection with a bona fide offering of goods or services. Accordingly, the Panel is prepared to infer that the Respondent knew or should have known that its registration would be identical to the Complainant’s distinctive mark at the time of registration. Lastly, and perhaps most tellingly, the Respondent’s response indicates an ongoing desire to sell the disputed domain name to the Complainant, with the inclusion of the statement, “The defendant would like to negotiate amicably with the plaintiff.” The Respondent did not offer to transfer the disputed domain name for a price equal to its actual out-of-pocket costs associated with the acquisition of the disputed domain name, but rather merely offered to “negotiate” with the Complainant. The response indicates the Respondent’s intent to sell the disputed domain name for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain name. Taken together, these factors indicate the Respondent had the Complainant in mind when registering and using the disputed domain name, and, to a balance of probabilities standard, indicates that that Respondent acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or one of its competitors.

Additionally, the use of the disputed domain name for commercial PPC links indicates that Respondent intentionally attempted to attract, for commercial gain, internet users to its web site or online location, by creating a likelihood of confusion with the Complainant’s SATYLIA mark. The Complainant’s evidence shows the disputed domain name resolved to a parking page with PPC links that could have commercial benefits. A customer looking for Complainant’s products could logically type “SATYLIA” into a search engine. Upon finding the disputed domain name through a search engine, such customer would likely be confused into thinking the disputed domain name is associated with or somehow endorsed by the Complainant. If a visitor to the website associated with the disputed domain name would click on any of the PPC links, this could result in a commercial benefit. The apparent intention by the Respondent to improperly attract internet users to the disputed domain name in this manner constitutes bad faith under Policy paragraph 4(b)(iv).

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii), 4b(i) and 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. **satylia.com**: Transferred

PANELLISTS

Name	Claire Kowarsky
------	-----------------

DATE OF PANEL DECISION	2023-10-21
------------------------	------------

Publish the Decision