Decision for dispute CAC-UDRP-106538

Case number	CAC-UDRP-106538
Time of filing	2024-05-17 09:10:17
Domain names	servierusa.com

Case administrator

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

Complainant

Organization	LES LABORATOIRES SERVIER

Complainant representative

Organization	IP Twins

Respondent

Organization	Ser

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

United States of America Trademark Registration No. 5830542 SERVIER with a priority date of 21 August 2017 for, inter alia, various medical apparatus in class 5.

FACTUAL BACKGROUND

The Complainant is part of the Servier Group, which is the second largest French based pharmaceutical group in the world. The Servier Group is active in 150 countries and employs more than 21,000 people globally.

The Complainant is the owner of numerous trade marks containing or consisting of the word SERVIER, including the above mentioned US trademark registration. Further, it owns a number of domain names that contain SERVIER, including <servier.com> and <servier.us>.

The dispute domain name was registered on 2 April 2024. It does not redirect web-users to an active website or webpage.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and

2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant asserts it has an US trademark registration consisting of the word SERVIER. This registration predates the registration date of the disputed domain name by a number of years.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark SERVIER.

The next question is whether the disputed domain name is confusingly similar to the SERVIER trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. And it also places little weight on the “USA” element in the domain name, which would be viewed by internet users to simply indicate that a website or email utilising the domain name originates from the branch of the Complainant's business operating in the United States of America. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the SERVIER element.

The disputed domain name is therefore confusingly similar to the SERVIER trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The webpage to which the disputed domain name resolves is inactive. Therefore, it has no content which would indicate any right or legitimate interest in the disputed domain name. The Respondent does indicate it name is "Ser (Servier Ser)" as this has been recorded as the registrant´s name. However, this fact alone does not indicate rights or legitimate interests. There is simply no documents or evidence to indicate the Respondent has a right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The Complainant's trade mark is distinctive and well known internationally. In such circumstances it is reasonable to infer that the Respondent registered the strikingly similar disputed domain name with full knowledge of the Complainant's rights in the SERVIER trademark. Such similarity will inevitably confuse internet users. It is further reasonable to infer that the only foreseeable purpose that the Respondent had to register the disputed domain name, was to opportunistically profit from such confusion or assist another person to do so, either through eventual email or website use. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 2nd ed. 2019, pp. 432 to 434.

The Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **servierusa.com**: Transferred

PANELLISTS

Name	**Andrew Sykes**

DATE OF PANEL DECISION 2024-06-24

Publish the Decision