Decision for dispute CAC-UDRP-106585

Case number	CAC-UDRP-106585
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Domain names	wegocoveram.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BIOFARMA

Complainant representative

Organization	IP TWINS

Respondent

Organization	Taiwo Oni

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

In this proceeding the Complainant relies on the following trademark registrations:

- International trademark registration under the “Madrid system” No. 939979 “COVERAM” (word), registration date is 6 July, 2007, protected in various jurisdictions, including, but not limited to, Armenia, Bahrain, Botswana, China, Egypt, Japan, Turkey and Ukraine;
- European Union trademark registration No. 005683561 “COVERAM” (word), registration date is November 19, 2007, date of application is February 1, 2007 and
- UK trademark registration No. UK00905683561 “COVERAM” (word), registration date is November 19, 2007, application date is 1 February 2007.

FACTUAL BACKGROUND

The Complainant made the following submissions

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that it is a part of the “Servier Group”, the second largest pharmaceutical French group in the world. The Complainant claims that this group is active in 150 countries and employs more than 21,000 people throughout the world and 100 million patients are treated daily with “Servier” products.

The Complainant provided some data and information about the “Servier Group” in annexes to the complaint.

The Complainant states that “COVERAM” is a medicine used for the treatment of hypertension and cardiovascular diseases, it is distributed in several countries and it provides a non-exhaustive list of countries where “COVERAM” is distributed as well as information about the medicine.

The “COVERAM” trademark of the Complainant is protected in numerous jurisdictions in addition to the registrations referred to above and the Complainant provides a list of such registrations in a separate annex.

The Complainant emphasizes that its trademark registrations pre-date the date of registration of the disputed domain name.

According to the Whois data the creation date of the disputed domain name is March 31, 2022.

The disputed domain name does not resolve to any active web page.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s mark since the disputed domain name contains the mark in its entirety and the mark is a fanciful term.

The Complainant contends that the term “wego” does not diminish the risk of confusion between the disputed domain name and the Complainant’s trademark COVERAM.

Internet users are likely to read the disputed domain name as “We Go Coveram” and presume it is a slogan promoting the “COVERAM” medicine.

The addition of the <.com> gTLD does not diminish confusing similarity as it is a technical requirement.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant makes the following submissions on the second UDRP element:

- The Respondent is not commonly known by the disputed domain name. The Respondent cannot claim to have been legitimately known under the names “COVERAM”, or the expressions “WEGO COVERAM” or ‘WE GO COVERAM”, as a genuine business or a website. The Complainant provided “Google” search results for the following terms: “COVERAM”, “WEGO COVERAM” and “WE GO COVERAM”. The Complainant highlights that such search results are almost exclusively associated with the Complainant;

- Trademark searches on “COVERAM”, “WEGO COVERAM” and “WE GO COVERAM” performed by the Complainant did not allow to detect any trademark right that could justify Respondent’s registration of the disputed domain name;

- The 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;

- The Respondent has never been granted authorization, license or any right whatsoever to use the trademark of the Complainant. The Respondent is not commercially linked to the Complainant;

- Since the adoption and extensive use by the Complainant of the trademark “COVERAM” predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant makes the following submissions on the bad faith registration and use:

1. The “Servier Group” is so widely well-known, and the “COVERAM” trademark so widely used while being a very distinctive, fanciful word (the Complainant refers to annexes its complaint) that it is very unlikely that the Respondent ignored the rights of the Complainant in respect of “COVERAM”. The Complainant asserts that its registrations significantly predate the registration date of the disputed domain name. A quick trademark search and/or a search engine query would have revealed the existence of the Complainant and its trademarks. Respondent’s failure to do so is a contributory factor to its bad faith. The Complainant again refers to its “Google” searches provided in annex for the following terms: “coveram”, “wego coveram” and “we go coveram”;
2. The Complainant states that "coveram" is an arbitrary, fanciful term, devoid of any meaning in any dictionary 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. The Complainant contends that the Respondent cannot claim to have registered the disputed domain name due to a dictionary meaning or a supposed value as generic term or expression.

The Complainant refers to annexes and contends that there is no way the registration of the disputed domain name is a mere coincidence. The Complainant strongly believes that the disputed domain name has been registered with the Complainant's trademark in mind.

3. The Complainant relies on the passive holding doctrine as formulated in "**Telstra Corporation Limited v. Nuclear Marshmallows", WIPO Case No. D2000-0003** and in sec. 3.3 of "**WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition**" ("WIPO Overview 3.0"). In particular, the Complainant claims that the relevant issue is not limited to whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather fine distinction, but it is an important one. The significance of the distinction is that the concept of a domain name "being used in bad faith" is not limited to positive action. The disputed domain name contains the prior, arbitrary, intensively used trademark of the Complainant, associated with the generic expression "we go". The Complainant cannot imagine a good-faith use of the disputed domain name by the Respondent, in light of the above.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's submissions are summarized above in the Factual Background section.

The Respondent did not submit a formal response.

However, the Respondent sent an email to the Provider on June 18, 2024 and stated the following:

"I received a proceeding letter as described above, I'm wondering what this is all about. I bought the domain name from a host administrator called Fasthost in the UK. I was not informed that there is a dispute about the domain name. I hope this is not a scam".

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 Panel did not make a finding on this element of the UDRP

BAD FAITH

The Complainant has not, 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.

The Panel needs to address the following procedural issues:

1) **Informal response** and

2) **Panel's procedural order and additional submissions by the Complainant in response to the procedural order**.

1) The Respondent did not file a formal response, however he sent an email to the CAC with the content described above. While this short email does not explain Respondent's reasons for registering the disputed domain name, it seems to deny the allegations in the

complaint. Such an informal response in any case lacks substance and certification that it is “complete and accurate” (Rule 5 (c) (vii)), yet the Panel takes it into consideration keeping in mind its obligation to give each party “a fair opportunity to present its case” (Rule 10 (b)).

2) The Panel notes that the Complainant provided “Google” search results for the following terms as one of the annexes to the complaint:
- "coveram"
- "wego coveram" and
- "we go coveram".

These “Google” results were the basis of the Complainant’s arguments on the bad faith element and the application of "passive holding" to the present dispute.

However, the Complainant did not submit “Google” search results for "wegocoveram", the exact match of the second level domain.
The Complainant relied on the "passive holding doctrine" and one of the important criteria of passive holding is "**the implausibility of any good faith use to which the domain name may be put**".
The Panel conducted its own independent research for the term "wegocoveram" in “Google” in accordance with Rule 10 of the UDRP Rules and sec. 4.8 of WIPO Overview 3.0.
The Panel conducted "Google" searches for the term "wegocoveram" both before the date of creation of the disputed domain name - March 31, 2022 and on the date of its Procedural Order - July 8, 2024.
The “Google” search results for "wegocoveram" available before March 31, 2022 did not contain any references to the Complainant’s “Coveram” trademark.

All such search results were related to a phrase: “we go cover am” that seems to be some kind of a slogan used by mainly African English-speaking community.

The “Google” search results for "wegocoveram" available on July 08, 2024 contained one (1) result related to the present administrative proceeding and the disputed domain name (a link to the CAC website).
All other results were related to the phrase: “we go cover am”.

One of such results linked to a website: https://rocketreach.co/taiwo-oni-email_136378221 where the following information was provided: “**Others Named Taiwo Oni. Taiwo Oni**
Digital Strategy and Tech Start-up Facilitator at WGCA Ltd (We Go Cover Am) InsurTech”.

The Panel also conducted a search for the term “Am” and found out that “Am” has a meaning in “Nigerian Pidgin English” and is a short form of “Him” or “Her” in a sentence, see http://naijalingo.com/words/am

The Panel made these findings available to the Complainant, issued a Procedural Order No. 1 on July 08, 2024 and invited the Complainant to provide its comments until July 12, 2024.

The Complainant provided additional submissions in response to the Procedural Order on July 11, 2024 and stated the following:
- “COVERAM” is a distinctive trademark, which is widely used across dozens of countries, including Nigeria, which slang was referred to in the Panelist’s comment. The “COVERAM” medicine can be bought from several online stores available to Nigerian internet users;
- The Respondent had a chance to respond to the complaint but did not, which is a factor for the application of the passive holding doctrine;
- The Respondent’s information was not available to the Complainant at the time of filing of the complaint. The Complainant contends that there is no supportive evidence of the link of the Respondent, domiciliated in Great Britain, with what appears to be Nigerian Slang;
- The Complainant acknowledges the expression uncovered by the Panel independent findings. However, considering the reputation and use of “COVERAM”, the Complainant maintains that the probability of a good faith use of the disputed domain name is still low, and that passive holding should be considered for the bad faith use criteria and
- Had the Respondent provided a response in line with the Panel findings, its stance would have been different. In this case, the Complainant would like to maintain its complaint and submitted additional annex relating to the information about sale of “COVERAM” medicine in Nigeria.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar

The Complainant provides evidence of the trademark registrations for the “COVERAM” mark in various jurisdictions, including the UK and the EU as well as its international registration effective in various countries.
As confirmed by WIPO Overview 3.0: “where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case” (see sec. 1.2.1).

Therefore, the Complainant proved it has trademark rights.

The disputed domain name fully incorporates the Complainant's mark with the addition of "wego". The confusing similarity test under the UDRP is relatively straightforward and involves a comparison between the complainant's trademark and the disputed domain name. This means "a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (see WIPO Overview 3.0, sec. 1.7).

The Complainant's word trademark "COVERAM" is fully incorporated in the disputed domain name and is recognizable within the disputed domain name. The Panel notes that its findings under the third UDRP element indicate that the disputed domain name may actually mean a phrase "we go cover am" (meaning "we go cover him/her") and this could potentially affect the confusing similarity analysis.

Yet, the "COVERAM" mark is recognizable in the disputed domain name, the disputed domain name is registered as one single word, therefore, the Panel is prepared to accept that the disputed domain name is confusingly similar to the Complainant's mark under the first UDRP element.

The gTLD ".com" is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

In view of Panel's analysis of bad faith registration and use, the Panel chose not to make its finding on this issue.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith. These circumstances are non-exhaustive and other factors can also be taken into account.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see sec. 3.1 of WIPO Overview 3.0). **Targeting with an intent to take an unfair advantage is important in establishing bad faith under the UDRP or, as put in the ICANN "Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy" 1999, the Policy only applies to cases of "abusive registrations" made with bad-faith intent to profit commercially from others' trademarks" (par. 4.1.c).**

Merely registering a disputed domain name that is confusingly similar to an earlier trademark is not enough.

The disputed domain name is not used for any active website and the Complainant relied on the "passive holding" doctrine and the "Telstra" decision, see https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0003.html .

Targeting can be either evident from the nature of use of a domain name (e.g. impersonation, copying look and feel of Complainant's own website, etc.) or inferred from other evidence and circumstances including nature of the domain name (e.g. an exact match of Complainant's well-known mark or a Complainant's mark plus a descriptive term relating to Complainant's business).

The Panel agrees that "the concept of a domain name "being used in bad faith" is not limited to positive action".

However, the passive holding doctrine and the "Telstra" principles have limited application.

The criteria are provided in sec. 3.3 of WIPO Overview 3.0 and the most important ones are:

- the degree of distinctiveness or reputation of the mark and
- **the implausibility of any good faith use to which the domain name may be put.**

The passive holding doctrine does not apply automatically to all cases where domain names confusingly similar to registered trademarks are not used.

The "Telstra" decision itself has a unique set of facts, including the fact that the disputed domain name (<telstra.org>) was an exact match of the Complainant's distinctive "Telstra" mark, both parties were from the same country and the respondent provided false information about its identity. The panelist in the "Telstra" decision noted that in passive holding cases the question of respondent's bad faith "can only be answered in respect of the particular facts of a specific case" and "the Administrative Panel must give close attention to all the circumstances of the Respondent's behaviour".

The Complainant provided proof of numerous trademark registrations for the word "COVERAM" and trademark search results, description of the "COVERAM" medicine, information about online promotion and sales of "COVERAM" in Nigeria, a list of countries where "COVERAM" is available, "Google" search results for the word "COVERAM".

The Panel is prepared to find, based on the provided evidence, that the "COVERAM" trademark has reputation, at least it is protected in numerous jurisdictions and appears to be widely used as demonstrated by "Google" search results provided by the Complainant.

Had the disputed domain name been an exact match of the Complainant's "COVERAM" trademark, this Panel would have agreed with the Complainant on the bad faith element.

However, it is not. The second level domain name is <wegocoveram> rather than <coveram>.

Besides, unlike in the “Telstra” case, in the present dispute the Respondent did not conceal its true identity. After the Registrar verification the Respondent contacted the CAC under his actual name as disclosed by the Registrar.

What is even more problematic for the Complainant in this dispute is the “implausibility of any good faith use” of the disputed domain name and evidence of targeting in general.

Implausibility of any good faith use of the disputed domain name and targeting

The Complainant’s initial arguments on that point were based on Annex 2 and on the “Google” searches submitted as Annex 15.

One of the annex provides information and data about “Servier Group”, it does not contain any information or data about the “COVERAM” mark (except mentioning “COVERAM” as one of the branded medicines), a phrase “We Go Coveram” or a term “wegocoveram” or does not in any way allow to establish that there is no plausible good faith use of the disputed domain name.

The Complainant’s own “Google” searches provided in Annex 15 were conducted for the three (3) terms:

- "coveram"
- "wego coveram" and
- "we go coveram".

For some reason the Complainant did not provide “Google” search results for the exact match of the second level domain name – “wegocoveram”.

As described in the Procedural Factors section above, the Panel, keeping in mind the limitations of the “passive holding doctrine”, the Complainant’s burden of proof even in default cases (see also sec. 4.3 of WIPO Overview 3.0) and a limited scope of the UDRP as confirmed, inter alia, in the ICANN **“Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy”** (see par. 4.1 c.), conducted its own “Google” searches for the exact match of the second level domain – “wegocoveram” that contained both results prior to the date of creation of the disputed domain name (March 31, 2022) and on the actual date of the search (July 8, 2024).

The results of the Panel’s own “Google” search for the term "wegocoveram" do not contain any references to the Complainant’s “COVERAM” mark (except one result that is related to the present proceeding).

Rather they were all related to a phrase “we go cover am” that appears to be a slogan used on various social media and websites.

One of the search results from the search conducted on July 8, 2024 seems to be related to the Respondent, namely:

https://rocketreach.co/taiwo-oni-email_136378221 where the following information was provided: “Others Named Taiwo Oni.

Taiwo Oni

Digital Strategy and Tech Start-up Facilitator at WGCA Ltd (We Go Cover Am) InsurTech”.

By clicking on that profile, a user is redirected to a page that partially matches the data of the Respondent as confirmed in the Registrar verification:

https://rocketreach.co/taiwo-oni-email_85566717

The Panel also conducted a search for the term “Am” and found that “Am” has a meaning in “Nigerian Pidgin English” and is a short form of “Him” or “Her” in a sentence, see http://naijalingo.com/words/am

Therefore, “we go cover am” may mean “we go cover him/her” and is used on the Internet as a slogan by various individuals.

These “Google” search results and a reference to the meaning of the word “Am” were brought to the Complainant’s attention and the Complainant was invited to provide additional submissions.

The Complainant did so and these submissions are summarized in section “Procedural Factors” above.

Nevertheless, in the Panel’s view, the Complainant’s additional submissions do not explain why there is no “plausible good faith use” of the disputed domain name where the disputed domain name may be perceived as a slogan seemingly used by various independent third parties, including possibly the Respondent. The Complainant also did not provide any evidence of its own use of "wegocoveram" as a slogan relating to its "COVERAM" medicine.

The Panel notes each party has its burden of proof. The Complainant is right that the Respondent failed to submit a formal response and provide substantive arguments. Yet, the Complainant’s submissions on the bad faith element do not establish targeting and the absence of plausible good faith use of the disputed domain name.

As noted in WIPO Overview 3.0: “The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”... Under this standard, a party should demonstrate to a panel’s satisfaction that it is more likely than not that a claimed fact is true…” and “a respondent’s default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are

true" (see sec. 4.2 and sec. 4.3).

Initial Complainant's submissions on the application of the passive holding doctrine were focused on the fact that "the concept of a domain name "being used in bad faith" is not limited to positive action" and that inaction can also be bad faith registration and use. The Panel does not argue with that.

Yet the Complainant fails to explain why the disputed domain name does not have plausible good faith use and the Complainant failed to argue that point even in its additional submissions noting only that "the probability of a good faith use of the disputed domain name is still low".

Based on the above, it appears that there is a plausibility of good faith use of the disputed domain name.

The Panel, in these circumstances, is not persuaded that the Respondent targeted the Complainant's mark as required under the UDRP.

The UDRP is limited to cases of "deliberate, bad faith abusive registrations" only (see par. 166 of Final Report of the WIPO Internet Domain Name Process, https://www.wipo.int/export/sites/www/amc/en/docs/report-final1.pdf). There is no evidence that this is the case here.

The disputed domain name is not used, it is not an exact match of the Complainant's "COVERAM" mark and the "Google" search results for the term "wegocoveram" are not related to the Complainant.

Such search results are related to a phrase/slogan "we go cover am" and link to various third parties. There is also at least an indication that the Respondent may be operating a business under the name "WGCA" or "We Go Cover Am".

The Respondent failed to submit a formal response and allege any rights or legitimate interest in respect of the disputed domain name.

Therefore, the Panel chose not to make any findings as to possible Respondent's rights or legitimate interest.

However, this indicates that, at least, there may be plausible good faith use of the disputed domain name and the passive holding doctrine cannot be applied to the present dispute based on the evidence and record available. This also indicates that, based on the present record, this case does not appear to be a case of cybersquatting.

Therefore, the Panel finds that the Complainant failed to establish that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

However, the Panel denies this complaint without prejudice to the Complainant's right to refile if in future it comes into possession of evidence of Respondent's bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **wegocoveram.com**: Remaining with the Respondent

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2024-07-16

Publish the Decision