Decision for dispute CAC-UDRP-106772

Case number	CAC-UDRP-106772
Time of filing	2024-08-07 09:17:25
Domain names	secureservier.net

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LES LABORATOIRES SERVIER

Complainant representative

Organization	IP TWINS

Respondent

Name	Kiera Gentry

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 is the owner of several trademark registrations for the word “SERVIER,” either as a standalone or in combination with figurative elements notably the following:

- International figurative trademark No. 549079, registered internationally on January 19, 1990, in multiple international classes, designating several countries, including France, Spain, Italy, and the Czech Republic;

- EU word trademark “SERVIER” No. 4279171, registered on October 15, 2007, in international classes 5, 35, 41, 42, and 44;

- International word trademark “SERVIER” No. 814214, registered internationally on August 5, 2003, in multiple international classes, designating several countries, including France, Spain, Germany, the United Kingdom, and China;

- US Trademark for “SERVIER,” US Registration No. 5830542, registered on August 13, 2019, covering goods and services, including in class 5;

(Hereinafter referred to as the “**SERVIER Trademarks**”)

FACTUAL BACKGROUND

The Complainant LES LABORATOIRES SERVIER is part of the Servier Group which is 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 disputed domain name <secureservier.net> was registered by the Respondent on July 11, 2024.

PARTIES CONTENTIONS

1. **Complainant**

The Complainant argues that the disputed domain name is confusingly similar to its SERVIER Trademarks, pointing out that when a domain name wholly incorporates a complainant's registered mark, this is sufficient to establish identity or confusing similarity for the purposes of the first element. Regarding the term "SECURE" included in the disputed domain name, the Complainant contends that this is a generic term, and that for internet users, the disputed domain name could refer, for example, to an online portal or secure access to the Complainant's services or resources.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name.

In particular, the Complainant notes that (i) the Respondent is not commonly known by the disputed domain name, which redirects to an error page; (ii) the Respondent has no trademark rights that would establish a legitimate interest in the registration of the disputed domain name; (iii) the Complainant's verifications did not detect any preparations to use the disputed domain name in connection with a bona fide offering of goods or services, as it redirects to an error page; (iv) the Respondent has never been granted authorization, license, or any right whatsoever to use the Complainant's trademark; and (v) the registration and use of the SERVIER Trademarks by the Complainant predate the registration of the disputed domain name by the Respondent.

The Complainant alleges that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant asserts that the SERVIER Trademarks are well known in many countries around the world and that they significantly predate the registration of the disputed domain name. The Complainant further contends that "Servier" is the surname of the founder of the Complainant and an arbitrary, fanciful term devoid of any meaning in English. Considering the distinctiveness of "SERVIER" in the English language and its extensive use, the Complainant argues that the registration of the disputed domain name is not a mere coincidence but was registered with the Complainant's trademark in mind.

Finally, although the disputed domain name is not actively used on the web, the Complainant contends that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. The disputed domain name contains the Complainant's prior, intensively used trademark, combined with the generic, relevant term "SECURE." The Complainant cannot conceive of any good-faith use of the disputed domain name by the Respondent in light of the above.

On the contrary, the Complainant contends that the disputed domain name, given its structure (SECURE + name of the Company), is likely to be used for sending fraudulent emails, notably for phishing purposes.

2. **Respondent**

No administratively compliant response has been submitted by the Respondent.

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).

The Complainant has successfully demonstrated that it is the rightful owner of several SERVIER Trademarks. The Panel acknowledges that the Complainant's SERVIER trademark is unmistakably recognizable in the disputed domain name and it notes that the additional word SECURE due to its generic nature, is insufficient to prevent likelihood of confusion with the Complainant's trademarks.

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).

A complainant is required to establish a prima facie case that the respondent lacks rights or legitimate interests. Once such a case is made, the burden of proof shifts to the respondent to demonstrate their rights or legitimate interests in the disputed domain name. Failure to do so results in the complainant satisfying paragraph 4(a)(ii) of the Policy (as per Article 2.1 of WIPO Jurisprudential Overview 3.0 and WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

Based on the contentions of the Complainant, the Panel finds that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

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).

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 Article 3.1. of WIPO Jurisprudential Overview 3.0).

Registration in bad faith

The Panel acknowledges that the Complainant has provided sufficient information and evidence to support its claim that the SERVIER marks are widely known and that the word "SERVIER" has no particular meaning, particularly in English, which is the language spoken in the United States, the Respondent's country of residence. In addition, one of the SERVIER trademarks was also registered in the Respondent's country of residence long before the registration of the disputed domain name.

Based on the foregoing, and taking into account the almost instantaneous and global reach of the Internet and search engines, the Panel concludes that the Respondent knew or should have known that its registration of the disputed domain name would be identical or confusingly similar to the Complainant's mark (see also Article 3.2. of the WIPO Jurisprudence Overview 3.0).

On the basis of the foregoing, the Panel concludes that the Respondent must have been aware of the Complainant and its mark when it registered the disputed domain name. Therefore, the Panel finds that the Respondent registered the disputed domain name in bad faith.

Use in bad faith

The disputed domain name includes the Complainant's trademark in its entirety, giving the impression of a connection to the goods/services marketed by the Complainant and creating a likelihood of confusion with the SERVIER Trademarks.

There is no active website associated with the disputed domain name. In this regard, the Panel considered whether, in the circumstances of this particular case, the Respondent's passive holding of the disputed domain name could be considered a use of the disputed domain name in bad faith. According to the WIPO Jurisprudence Overview 3.0, non-use of a domain name would not preclude a finding of bad faith under the passive holding doctrine. Factors considered relevant in applying the passive holding doctrine include (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the respondent's failure to file a response or to provide evidence of actual or intended good faith use; (iii) the respondent's concealment of its identity or use of false contact information (in violation of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name might be put (see also Telstra Corporation Limited vs. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org>).

In the circumstances of this case, the Panel finds that the Complainant has successfully demonstrated the inherent and acquired distinctiveness of the Complainant's SERVIER trademarks. In addition, the Panel notes that the Respondent has not provided any response or evidence of actual or intended use in good faith.

Therefore, the Panel is satisfied that the totality of the circumstances of this case supports a finding that the Respondent's failure to use the domain name for a functional website supports the Panel's finding that the disputed domain name is being used in bad faith.

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

The Panel has determined that the disputed domain name is confusingly similar to the Complainant's trademark.

Based on the contentions presented by the Complainant, the Panel has found that the Complainant has satisfactorily made a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

The Panel finds that, based on the Complainant's contentions and evidence, it can be concluded that the Respondent must have been aware of the Complainant's trademarks when it registered the disputed domain name, and as such, the Respondent has

registered the disputed domain name in bad faith.

Lastly, the Panel has concluded that the Complainant has successfully proven that the disputed domain name is being used in bad faith.

Therefore, for the aforementioned reasons, the Panel orders that the disputed domain name <secureservier.net> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **secureservier.net**: Transferred

PANELLISTS

Name	**Karel Šindelka**

DATE OF PANEL DECISION 2024-09-09

Publish the Decision