

Decision for dispute CAC-UDRP-104729

Case number	CAC-UDRP-104729
Time of filing	2022-07-22 09:21:40
Domain names	asparlascalaspargasepegol.com, asparlasservier.com

Case administrator

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

Organization	Servier IP UK Limited
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Complainant representative

Organization	IP TWINS
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Respondent

Organization	Buy this domain on Dan.com ----
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the term “ASPARLAS”, in particular:

The Complainant is the owner of several trademarks consisting of the term “ASPARLAS”, in particular:

- European Trademark registration ASPARLAS n°016732729, filing date May 17, 2017, international class 5;
- US Trademark registration ASPARLAS n°5950575, filing date May 16, 2017, international class 5;
- UK Trademark registration ASPARLAS n°UK00916732729, filing date May 17, 2017, claiming priority date of May 16, 2017, international class 5.

Collectively, the “Complainant’s Trademarks”

The Complainant also has two pending UK applications, filed on the same date as the registration of the disputed domain

names:

- UK Trademark application ASPARLAS calaspargase pegol n° UK00003792066, filing date May 25, 2022, international class 5;
 - UK Trademark application ASPARLAS SERVIER n° UK00003792043, filing date May 25, 2022, international class 5.
- Together, the “Complainant’s Pending UK Applications”

Further, the Complainant owns the domain name <asparlas.com>, registered since May 16, 2017 and actively used by the Complainant’s group in relation to the ASPARLAS brand.

FACTUAL BACKGROUND

On May 25, 2022, the Respondent registered the following two disputed domain names:

<asparlascalaspargasepegol.com>

<asparlasservier.com>

The language of the registration agreement is English.

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

The Complainant is part of the Servier Group: the largest independent French pharmaceutical group and the second largest pharmaceutical group in France. The group is active in 149 countries and employs around 22,000 people throughout the world. 100 million patients are treated daily with Servier medicinal products and generics.

The Servier Group engineered the medication Calaspargase pegol, used as a component of a multiagent chemotherapeutic regimen for the treatment of acute lymphoblastic leukemia (ALL) in pediatric and young adult patients aged 1 month to 21 years. It is sold under the brand ASPARLAS.

The disputed domain names are confusingly similar to the Complainant’s arbitrary and fanciful trademark ASPARLAS. The combination of ASPARLAS with the related terms “servier” and “calaspargase pegol” in the disputed domain names aggravates the risk of confusing similarity.

The Respondent has no rights or legitimate interests in the disputed domain names because: i) there is no evidence that respondent is commonly known by the terms in the disputed domain names, nor other connection between the Respondent and a legitimate use of the terms; ii) there is no evidence that the Respondent is preparing to use the disputed domain names in connection with a bona fide offer of goods or services; iii) the Respondent has not been authorized by the Complainant to use its trademarks, nor is there any commercial link between Complainant and Respondent; iv) Complainant had extensively adopted and used the trademark ASPARLAS prior to the registration of the disputed domain names, placing the burden on Respondent to show its rights or interests.

Regarding registration and use in bad faith: i) Complainant’s Servier Group is widely known such that it is unlikely the Respondent did not know about the Complainant’s rights in the mark ASPARLAS; ii) ASPARLAS is a fanciful, arbitrary term, without any dictionary meaning and thus the disputed domain names’ registrations incorporating this term are not merely coincidental; iii) the fact that the disputed domain names were registered on the same day and using the identical terms as the Complainant’s Pending UK Applications is no coincidence, and demonstrates that the Respondent was targeting the Complainant when registering the disputed domain names; and iv) the disputed domain names are being used in bad faith, as both are offered for sale for a price close to USD 1,000 each and as the disputed names include prior Complainant Trademarks of a non-generic and fanciful term, this is a strong indicator of bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

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 the disputed domain names should be transferred or cancelled:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are 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:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term ASPARLAS in class 5. Further, the Complainant is the owner of a domain name that incorporates its trademark <ASPARLAS.COM>. All of the above were created and registered prior to May 25, 2022, the creation date of the disputed domain names. It is well established that 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. As such, the Panel finds that the Complainant possesses rights in its ASPARLAS trademark.

The Panel finds that the disputed domain names <asparlascalaspargasepegol.com> and <asparlasservier.com> are confusingly similar to the Complainant's ASPARLAS trademark, since both incorporate the ASPARLAS trademark in its entirety, simply with the addition of the related terms "calaspargasepegol" and "servier". Numerous UDRP panels have

recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has also been held in many UDRP decisions so as to become a consensus view among UDRP panels that the mere addition of descriptive or other terms does not dispel a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements, as discussed below (see paragraph 1.8 WIPO Overview 3.0).

UDRP panels agree that 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 names are confusingly similar to Complainant's mark.

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

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain names. The generally adopted approach by UDRP panels, 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, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, CAC Case No. 102263, Intesa Sanpaolo S.p.A. v Ida Ekkert. 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.

In the present case, the Complainant asserts that the Respondent is not commonly known by the disputed domain names, has not shown any intent to use the domain names for a bona fide purpose, is not in any way related to the Complainant, and has not been granted an authorization or license to use the disputed domain names by the Complainant. There is nothing in the whois or websites associated with the disputed domain names that provides as much as a scintilla of evidence that the Respondent has rights in the disputed domain names. Further, the Complainant asserts, and the Panel tends to agree, that the prior adoption and use of the Complainant's Trademarks, places a burden on the Respondent to show its rights in the disputed domain names. This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of the Policy).

According to evidence submitted by the Complainant, the disputed domain names resolve to a page hosted on the domain name trading service <dan.com> offering each of the disputed domain names for sale for USD \$995. In light of the fanciful and distinctive mark incorporated within the disputed domain names – and the use of the associated terms therein - the offering of the disputed domain names for sale is not a legitimate purpose that would suffice to evidence a non-cybersquatting intention. There is no evidence of legitimate use of the disputed domain names nor of any plan by the Respondent to make such legitimate use. In summary, the Complainant has made out its prima facie case, in respect of this element, with no rebuttal by the Respondent.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain names. 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 NAMES

The third element requires Complainant to show that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. *Hallmark Licensing, LLC v. EWebMall, Inc.*, Case No. D2015-2202 (WIPO, February 12, 2016) (“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.”).

BAD FAITH REGISTRATION

At the time the disputed domain names were registered, it is highly likely the Respondent had knowledge of the Complainant's Trademarks. First, Complainant adduced evidence to show that, if the Respondent had carried out a Google search for either of the terms “ASPARLAS SERVIER” and/or “ASPARLAS CALASPARGASE PEGOL”, the search results would have yielded immediate and obvious references to the Complainant. Second, the Complainant's Trademarks are fanciful and complicated, consisting of an eight-character string with no dictionary meaning. Third, the Complainant filed trademark applications for identical terms to those included in the disputed domain names, on the same date as the disputed domain names were registered – which indicates a deliberate attempt to infringe on the Complainant's trademark rights and goodwill in its brands and business. Fourth, the other terms incorporated in the disputed domain names respectively refer to the medicine sold under the Complainant's Trademarks, and the trademark owner company name and well-known Servier group, and as such indicate deliberate targeting of the Complainant by the Respondent. Considering these factors, it can reasonably be inferred that the Respondent either knew, or should have known, that the disputed domain names would be identical, or confusingly similar to, the Complainant's trademarks and that they registered the disputed domain names with knowledge of the Complainant's trademarks and in bad faith.

BAD FAITH USE

The Panel accepts Complainant's evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain names in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain names. Complainant submits the Respondent is not commonly known under the disputed domain names and that Respondent has never been authorized or licensed by Complainant to use the Complainant's trademark(s) or register the disputed domain names. This prima facie evidence has not been challenged by the Respondent.

Further, the disputed domain names redirect to a page on the domain name trading website <dan.com>, with each disputed domain name offered for sale for USD \$995. USD \$995 is more than the Respondent's reasonable out-of-pocket expenses in relation to the acquisition of the disputed domain names, and as such – especially given the fanciful and distinctive nature of the trademarks therein – supports a finding of bad faith use.

In reaching its overall conclusion for this element of the Policy, the Panel has considered the following relevant factors:

1. Respondent almost certainly knew of the Complainant's registered trademarks and Complainant's Pending UK Applications at the time of registration.
2. The disputed domain names are confusingly similar to the Complainant's trademarks and incorporate relevant associated terms.
3. The priority, use, reputation and goodwill in the Complainant's Trademarks.
4. The Respondent failed to provide any evidence-backed rationale for registering the disputed domain names – and in fact did not respond at all in these proceedings.
5. The disputed domain names are being offered for sale at a price in excess of the out-of-pocket costs associated with

registration.

Accordingly, the Panel concludes that the Respondent registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related directly to the domain names as prohibited under paragraph 4(b)(i) of the Policy.

As a final point, the Panel notes that the Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain names, with the inclusion of a dubious phone number consisting of the prefix "376" followed by a repeated digit for the remaining numbers. The prefix “376” is indicative of the country Andorra, whereas the Respondent’s address is purportedly in Grand Cayman. This false and/or incomplete contact information casts a negative light on Respondent’s behaviour, supporting the case for finding bad faith registration and use.

In summary, Complainant made out its case that the disputed domain names were registered and are being used in bad faith, and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **ASPARLASCALASPARGASEPEGOL.COM:** Transferred
- 2. **ASPARLASSERVIER.COM:** Transferred

PANELLISTS

Name	Claire Kowarsky, LL.M
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DATE OF PANEL DECISION 2022-08-25

Publish the Decision