Panel Decision for dispute CAC-ADREU-008618

Case number	CAC-ADREU-008618
Time of filing	2024-05-24 17:07:41
Domain names	myservier.eu

Case administrator

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

Complainant

Organization	LES LABORATOIRES SERVIER

Complainant representative

Organization	IP TWINS

Respondent

Organization	ITtrust Domain Services LTD

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other proceedings pending or decided on this disputed domain name.

FACTUAL BACKGROUND

The Complainant is a French based pharmaceutical company that operates internationally in 150 countries and employs more 21,000 people. It owns various trade mark registrations incorporating its SERVIER mark including European trade mark registration number 004279171 registered on February 7, 2005. The Complainant owns various domain name registrations incorporating its SERVIER mark, including <myservier.be>, <myservier.ch> and <myservier-me.com> all of which it has started using recently as information portals for healthcare professionals.

The disputed domain name was registered on January 11, 2024 and resolves to a pay- per-click website that also advertises that the disputed domain name “may be for sale for GBP6999”.

A. COMPLAINANT

The Complainant submits that the disputed domain name includes the Complainant’s SERVIER trade mark in its entirety and is therefore confusingly similar to the disputed domain name. It says that the inclusion in the disputed domain name of the term “my” does not diminish the risk of confusion and does not prevent a finding of confusing similarity.

The Complainant says that the Respondent is not commonly known by the disputed domain name and that based on the Complainant’s searches the Respondent owns no registered trade mark rights in the disputed domain name and the Complainant is unaware of any due preparations by the Respondent to use the disputed domain name in relation to a bona fide offering of goods or services. The Complainant asserts that it is not affiliated with the Respondent in any way and has not authorised or licensed it to use and register the SERVIER trade mark or to seek registration of any domain name incorporating the trade mark or any similar sign and that the Respondent is not commonly known by the disputed domain name. Accordingly, says the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name.

As far as bad faith is concerned, it says that the SERVIER mark enjoys an international reputation in connection with its business activities and that SERVIER is an arbitrary and fanciful term that is distinctive, such that the Respondent must have been well aware of the SERVIER mark when it registered the disputed domain name.

The Complainant says that the fact that the disputed domain name is offered for sale at £6999 pounds in circumstances that it contains the very well reputed SERVIER mark which is obviously targeted to take advantage of the Complainant's "my servier" information portals at the disputed domain names listed above, is indicative of the Respondent's use in bad faith. It further notes that the on-site contact email address for the disputed domain name appears to be linked to other domain names containing famous brands. This says the Complainant is indicative of bad faith as this email address appears to also be linked to other domain names containing famous names and is therefore indicative of a pattern of such bad faith conduct.

B. RESPONDENT

No Response was filed.

DISCUSSION AND FINDINGS

The Complainant has demonstrated that it owns registered trade mark rights for its SERVIER mark, namely European trade mark registration number 004279171 registered on February 7, 2005. The disputed domain name wholly incorporates the SERVIER trade mark which is the dominant and distinctive element and the disputed domain name is therefore confusingly similar to the Complainant's registered trade mark right. The inclusion of the word "my" does not prevent a finding of confusing similarity. Accordingly, the Complaint succeeds under paragraph 11 (d) 1 (i) of the ADR rules.

The Complainant has submitted that the Respondent is not affiliated with it in any way and that the Respondent has not been authorised or licensed by the Complainant to use and register its trade mark. The Complainant has also submitted that the Respondent is not commonly known by the disputed domain name and has not demonstrated the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The Complainant has noted that the disputed domain name resolves to a website, that includes pay per click advertising links and an offer to sell the disputed domain name for many times the registration costs, neither of which are consistent with the Respondent having rights or legitimate interests in the disputed domain
name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Complainant's case has not been rebutted by the Respondent, the Panel finds for these reasons and as set out below, that the Complainant has successfully made out its case and that the Complaint also succeeds under paragraph 11 (d) 1 (ii) of the ADR rules.

The disputed domain name was registered in January 2024, many years after the Complainant registered its SERVIER trade mark. The Complainant's mark appears to enjoy a substantial reputation in numerous countries and has a substantial on-line presence. The disputed domain name wholly incorporates the Complainant's mark together with the pronoun "my". It does not resolve to a website featuring a bona fide offering of goods or services but rather to a pay-per-click website that includes an offer for sale of the disputed domain name far in excess of its original registration cost. In these circumstances the Panel finds that there is a very strong inference that the Respondent was well aware of the Complainant's SERVIER mark when it registered the disputed domain name.

Under paragraph 11(f) (4) of the ADR Rules there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's name as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent in this case has used the disputed domain name containing the Complainant's SERVIER name and trade mark to confuse Internet users and to re-direct them to what appears to a website containing pay-per -click and an offer for sale of the disputed domain name far in excess of its original registration cost. Internet users arriving at the website who are seeking the Complainant's business are likely to be confused into thinking that they are arriving at one of the Complainant's various "myservier" information portal websites when they are in fact arriving at the Respondent's pay per click website which also features an offer for sale of the disputed domain name at a price that is many times the original registration cost of the disputed domain name. The Respondent's website has links which divert internet users to a website that appear to be medical and health related sites. The use of the disputed domain name in this way is obviously for the Respondent's commercial gain and is evidence of registration or of use in bad faith under paragraph 11(f) (4) of the ADR Rules.

Previous panels have found that where the disputed domain name is offered at a price much inflated beyond the registrant's registration costs that this is also indicative of bad faith. The Respondent's bad faith is further evidenced by the fact that the disputed domain name is offered for sale at the vastly inflated price of £6999 pounds in circumstances that it contains the very well reputed SERVIER mark which is obviously targeted to take advantage of the Complainant's "my servier" information portals.

The Complainant has also noted that the on-site contact e-mail address for the disputed domain name appears to be linked to other domain names containing famous brands which only reinforces the Panel's view of the Respondent's bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and has also been used in bad faith and that the Complaint also succeeds under paragraph 11 (d) (3) of the Rules.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <myservier.eu> be transferred to the Complainant.

PANELISTS

Name	**Mr Alistair Payne**

DATE OF PANEL DECISION 2024-05-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: myservier.eu

II. Country of the Complainant: France, country of the Respondent: Ireland
III. Date of registration of the domain name: January 11, 2024

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:
1. SERVIER, European trade mark registration number 004279171 registered on February 7, 2005

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. No
2. Why: Complainant made out a prima facie case that the Respondent had no rights or legitimate interests which was not rebutted by the Respondnet.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes

2. Why: Complainant made out a prima facie case that the Respondent had no rights or legitimate interests which was not rebutted by the Respondent.

IX. Other substantial facts the Panel considers relevant: Evidence of offer to sell the disputed domain name at a price well beyond the registration costs

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes