

ADMINISTRATIVE PANEL DECISION

Mylan, Inc. v. Domains By Proxy, LLC / viatris it
Case No. D2022-0401

1. The Parties

The Complainant is Mylan, Inc., United States of America (“United States” or “US”), represented by The Webb Law Firm, United States.

The Respondent is Domains By Proxy, LLC, United States / viatris it, India.

2. The Domain Name and Registrar

The disputed domain name <viatrisit.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the first amendment to the Complaint on February 13, 2022 and the second amendment to the Complaint on February 16, 2022.

The Center verified that the Complaint, together with the first and second amendments to the Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 24, 2022.

The Center appointed José Ignacio San Martín Santamaría as the sole panelist in this matter on April 4, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure

compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant Mylan, Inc. is a member company of Viatris, a global healthcare company.

The Complainant is the proprietor of several trademark registrations and applications in the US and India including or consisting of VIATRIS, *inter alia*:

- US trademark Application No. 88607510 VIATRIS, filed on September 6, 2019 in classes 5 and 10;
- US trademark Registration No. 6149437 VIATRIS, registered on September 8, 2020 in class 44;
- US trademark Application No. 90062387 VIATRIS (fig), filed on July 20, 2020 in classes 5, 10, and 44;
- US trademark Application No. 90095165 VIATRIS (fig), filed on August 5, 2020 in classes 5, 10, and 44;
- US trademark Registration No. 6374120 VIATRIS ADVOCATE, registered on June 1, 2021 in class 44;
- US trademark Application No. 90287138 VIATRIS SMART INJECTION TRACKER, filed on October 29, 2020 in class 9;
- US trademark Registration No. 6366329 VIATRISCONNECT, registered on May 25, 2021 in class 44;
- Indian trademark Registration No. 4604486 VIATRIS (fig), registered on August 10, 2020 in class 10;
- Indian trademark Registration No. 4604484 VIATRIS (fig), registered on August 10, 2020 in class 10;
- Indian trademark Registration No. 4604485 VIATRIS (fig), registered on August 10, 2020 in class 5;
- Indian trademark Registration No. 4604483 VIATRIS (fig), registered on August 10, 2020 in class 5;
- Indian trademark Registration No. 4300725 VIATRIS, registered on September 23, 2019 in class 10;
- Indian trademark Registration No. 4300724 VIATRIS, registered on September 23, 2019 in class 5;
- Indian trademark Registration No. 4666023 VIATRIS EVERYWHERE HEALTH MATTERS, registered on September 21, 2020 in class 44; and
- Indian trademark Registration No. 4666022 VIATRIS EVERYWHERE HEALTH MATTERS (fig), registered on September 21, 2020 in class 44.

The disputed domain name was registered on January 9, 2022 and apparently does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant owns the trademark registrations/applications for VIATRIS mentioned before.

The Complainant Mylan is a member company of Viatris, a global healthcare company committed to empowering people to live healthier at every stage of life. The Complainant submits that the VIATRIS mark is one of its most important marks in all of its brand families.

The disputed domain name clearly incorporates the Complainant's registered VIATRIS mark as the dominant portion of the domain, with the addition of the term "it", as in the noun "it" or as a possible acronym for "Information Technology".

The Respondent has no rights or legitimate interests in respect of the disputed domain name which are the subject of this Complaint. Particularly, the Respondent's use of the disputed domain name is in bad faith. The Respondent is using the disputed domain name, which is identical and/or confusingly similar to the Complainant's registered marks, in order to divert Internet users to a website and to misrepresent itself as a pharmaceutical company called "Viatris Global Healthcare" interested in hiring new candidates. It is creating a false and misleading association with the Complainant.

The disputed domain name should be considered as having been registered and used in bad faith by the Respondent. Representatives under this disputed domain name have been misappropriating themselves as representatives for Mylan Inc. under the Viatrix name by making fraudulent calls and transmitting fake offer letters for employment in the name of Viatrix Global Healthcare.

The Respondent has actual or constructive knowledge of the actual Viatrix company, along with the valuable associated trademarks and service marks. This use not only tarnishes the Complainant's marks and associated goodwill, but also it purposely disrupts the Complainant's business and will lead to consumer confusion as to affiliation, all of which further provide evidence of bad faith.

As a consequence, the Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel shall grant the remedies requested if the Complainant proves that:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, for this purpose the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The Complainant has trademark rights for its trademark VIATRIS.

The disputed domain name wholly incorporates the Complainant's trademark VIATRIS with the additional term "it" (which may be intended as an abbreviation for "Information Technology"). The VIATRIS trademark is clearly recognizable within the disputed domain name.

As stated in *Crédit Industriel et Commercial v. Manager Builder, Builder Manager*, WIPO Case No. [D2018-2230](#):

"The disputed domain name incorporates the CIC trademark in its entirety. 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 (see *e.g.*, *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)). Moreover, it has been held in many UDRP decisions and has become a consensus view among UDRP panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)", section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term 'banks', which even is the English translation of the French term 'banques' as it is reflected in the Complainant's CIC BANQUES trademark, does not avoid the confusing

similarity arising from the incorporation of the Complainant's CIC trademark in the disputed domain name.”

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's VIATRIS trademarks as provided under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established based on the facts set out above a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to the Respondent to come forward with appropriate evidence demonstrating rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that the Respondent has defaulted, he or she has not met that burden.

Pursuant to paragraph 4(c) of the Policy, a Respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's use cannot be considered as a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The Complainant has provided clear indications that the Respondent is impersonating the Complainant in communications to third parties in emails from the disputed domain name, including by using the Complainant's figurative mark on letters. The Panel notes that both the composition of the disputed domain name and the content of such use carry a risk of implied affiliation with the Complainant.

In summary, the Panel finds that paragraph 4(a)(ii) set forth in the Policy is established.

C. Registered and Used in Bad Faith

According to paragraph 4(b)(iv) of the Policy, registration or use of a domain name will be considered in bad faith when:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Respondent's registration and use of the disputed domain name wholly incorporating a third-party mark is, in the Panel's view, indicative of bad faith. Furthermore, there is clear evidence of impersonation in the Respondent's use of the disputed domain name, according to the evidence provided by the Complainant, not contested by the Respondent.

As mentioned in *Andrey Ternovskiy dba Chatroulette v. Alexander Ochkin*, WIPO Case No. [D2017-0334](#):

“It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it

(see *AT&T Corp. v. Amjad Kausar*, WIPO Case No. [D2003-0327](#)).”

The Complainant has established that emails are being sent from this disputed domain name impersonating the HR department of “Viatriis Global Healthcare”, which is precisely how the Complainant identifies itself on its website. It therefore seems clear that the Respondent is using the disputed domain name to impersonate the Complainant.

As reminded in section 3.1.4 of the [WIPO Overview 3.0](#):

“Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful,..”

The use of a privacy service also seems to confirm the bad faith of the Respondent. While there may be circumstances that make the use of a privacy service legitimate, several UDRP decisions have considered it a circumstance that contributes to consider bad faith proven when it is combined with other types of circumstances. In *GVC Holdings plc / ElectraWorks Limited v. Registration Private, Domains By Proxy, LLC / Adnan Atakan Alta*, WIPO Case No. [D2016-2563](#), the panel found that:

“Although privacy services might be legitimate in certain circumstances, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the choice of the disputed domain names (which fully incorporate the Complainant’s trademark), the content as well as the design of the Respondent’s corresponding websites rather indicate that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.”

In the light of the above, the Panel finds that the Complainant has established registration and use of the disputed domain name in bad faith and concludes that paragraph 4(a)(iii) of the Policy is satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <viatrisit.com> be transferred to the Complainant.

/José Ignacio San Martín Santamaría/

José Ignacio San Martín Santamaría

Sole Panelist

Date: April 18, 2022