

ADMINISTRATIVE PANEL DECISION

Nutricia International B.V. v. feiyao qiao, qiaofeiya
Case No. D2023-0194

1. The Parties

The Complainant is Nutricia International B.V., Netherlands, represented by Eversheds Sutherland (France) LLP, France.

The Respondent is feiyao qiao, qiaofeiya, China.

2. The Domain Name and Registrar

The disputed domain name <aptamil-bm.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 16, 2023. On January 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2023, 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 (Whois Privacy Protection Service by onamae.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 19, 2023.

On January 17, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On January 19, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended 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 in English and Japanese of the Complaint, and the proceedings commenced on January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 14, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on March 3, 2023. 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

Since the Complainant's establishment in 1896 in the Netherlands, it has been developing its nutrition business including infant and medical nutrition business. The Complainant is present in more than 100 countries across the world. The Complainant distributes infant milks under APTAMIL brand.

The Complainant has a substantial portfolio of trademarks, including APTAMIL trademark in several countries, such as:

- International Registration for APTAMIL No 376506 registered on February 2, 1971;
- International Registration for APTAMIL No 894039 registered on July 19, 2006;
- International Registration for APTAMIL No 1387387 registered on October 27, 2017;
- European Union Registration for APATMIL No 017394834 registered on March 14, 2018;
- European Union Registration for APATMIL No 007203813 registered on October 21, 2010.

The Complainant, along with other group subsidiaries, owns a number of domain name registrations featuring the APTAMIL trademark, including <aptamil.com> registered in 2007 as well as <aptamil.asia>, <aptamil.az>, <aptamil.be>, <aptamil.bg>, <aptamil.ch>, <aptamil.cl>, <aptamil.cn>, <aptamil.co>, <aptamil-baby.co.uk>, <aptamilbaby.cn> and <aptamilmama.com>.

The disputed domain name was registered on October 22, 2022, and redirects Internet users to a pornographic website.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant contends that the disputed domain name is confusingly similar to its APTAMIL trademark, since the disputed domain name incorporates the APTAMIL trademark in its entirety. The disputed domain name only differs from the Complainant's APTAMIL trademark by the addition of the term "-bm" after the APTAMIL trademark. The addition of such descriptive term is not enough to avoid confusing similarity between the disputed domain name and the APTAMIL trademark. And, the mere addition of ".com" is immaterial when determining whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant and is not an authorized dealer, distributor, or licensee of the Complainant, nor has it been otherwise allowed by the Complainant to

make any use of its APTAMIL trademarks. And, the Respondent has not been commonly known by the disputed domain name.

Third, the Complainant contends that the disputed domain name was registered in bad faith. Since the Complainant's APTAMIL trademark is highly distinctive and well-known globally, it is inconceivable that the Respondent could have been unaware of the Complainant's trademark at the time of registration of the disputed domain name registered on October 22, 2022, given the fact that the Complainant had already registered and extensively used its APTAMIL trademarks throughout the world for decades. The fact that the disputed domain name redirects to a pornographic website to obtain commercial gain shows that the disputed domain name is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant requested to that effect;
- the Respondent did not reply to the notification in both English and Japanese by the Center that the Respondent was invited to indicate its objection, if any, to the Complainant's request for the language by the specified due date;
- the disputed domain name is not in Japanese script;
- the use of Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case 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. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the APTAMIL trademark.

The first part of the disputed domain name is the term “APTAMIL”, which is same as the Complainant’s trademark. Such inclusion is by itself enough to have the disputed domain name to be confusingly similar to the Complainant’s APTAMIL trademark.

The latter part after the hyphen and before “.com” is “bm”. The addition of a hyphen and the term “bm” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s APTAMIL trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The last part of the disputed domain name “.com” represents one of the generic Top-Level Domains, which is irrelevant in the determination of the confusing similarity between the disputed domain name and the APTAMIL trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence at all that shows the Respondent is commonly known by the name “aptamil-bm”. The Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant’s APTAMIL trademark. The use of the disputed domain name, that is, redirecting to a pornographic website for commercial gain without any consent of the Complainant constitutes neither a *bona fide* offering service nor a legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complainant’s contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

In consideration of the long history and large size of the Complainant’s business, it is highly unlikely that the Respondent would not have known of the Complainant’s right in the trademark at the time of registration of the disputed domain name. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the fact that the disputed domain name redirects to a pornographic website for a commercial gain without any consent of the Complainant shows that the Respondent’s use of the disputed domain name is being done in bad faith.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be 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 <aptamil-bm.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: March 17, 2023