

ADMINISTRATIVE PANEL DECISION

Kite Pharma, Inc. v. Ryan Roggy
Case No. D2023-0305

1. The Parties

Complainant is Kite Pharma, Inc., United States of America (“United States”), internally represented.

Respondent is Ryan Roggy, United States.

2. The Domain Name and Registrar

The disputed domain <kitepharmas.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on January 31, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 31, 2023.

The Center verified that the Complaint, together with the amendment 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 Respondent of the Complaint, and the proceedings commenced on February 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 2, 2023.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on March 7, 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

Complainant is a company based in the United States, and subsidiary of Gilead Sciences, Inc. For years prior to the registration of the disputed domain name, Complainant has offered biopharmaceutical products and services under the marks KITE and KITE PHARMA. Complainant is the owner of several trademark registrations for KITE and KITE PHARMA marks. These include, among others, United States Registration No. 6108120 (registered July 21, 2020) for KITE and European Union Intellectual Property Office (EUIPO) Registration No. 13843206 (registered July 21, 2015) for KITE PHARMA. Complainant also owns several registrations for domain names that include its KITE or KITE PHARMA marks. Among these are the domain name <kitepharma.com> (registered June 11, 2009), which Complainant uses to connect with prospective consumers online.

The disputed domain name was registered on September 9, 2022. The disputed domain name is not currently linked to an active website. Respondent nevertheless has no affiliation with Complainant, nor any license to use Complainant's marks.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns registrations for the "well-known" marks KITE and KITE PHARMA, which has achieved strong commercial recognition, including by being featured in numerous unsolicited media reports, such as by USA Today, Forbes, Business Wire, and Yahoo News. Complainant contends that Respondent has incorporated in full its KITE PHARMA mark into the disputed domain name with only the addition of the letter "s" which would simply indicate a plural of Complainant's "well-known" marks and biopharmaceutical products and services.

Complainant contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith, having simply acquired the disputed domain name for Respondent's own commercial gain, likely in order to confuse consumers seeking web-based information about Complainant and its goods and services.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel must first determine whether the disputed domain name <kitepharmas.com> is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is. The disputed domain name incorporates in full Complainant's registered KITE PHARMA mark with only the addition of the letter "s."

Prior UDRP panels have found in analogous situations that the mere addition of a letter "s" does not prevent a finding of confusing similarity. See *Gilead Sciences, Inc. v. Xing Wang*, WIPO Case No. [DCC2021-0011](#).

The Panel therefore finds that the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights for purposes of paragraph (4)(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel next considers whether Complainant has shown that Respondent has no “rights or legitimate interest”, as must be proven to succeed in a UDRP dispute. Paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include: (i) use of the domain name “in connection with a *bona fide* offering of goods or services”; (ii) demonstration that respondent has been “commonly known by the domain name”; or (iii) “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.”

No evidence has been presented to the Panel that might support a claim of Respondent's rights or legitimate interests in the disputed domain name, and Respondent has no license from, or other affiliation with, Complainant.

Therefore, the Panel finds that Complainant has provided sufficient evidence of Respondent's lack of “rights or legitimate interests” in accordance with paragraph 4(a)(ii) of the Policy which Respondent has not rebutted.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. As noted in Section 4 of this Panel's decision, the disputed domain name is not currently linked to an active website. It is nevertheless well established that a passive holding of a disputed domain name does not necessarily shield a respondent from a finding of bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), Paragraph 3.3, which notes that the “non-use of a domain name” does not necessarily negate a finding of bad faith. Rather, a panel must examine “the totality of the circumstances”, including, for example, whether a complainant has a well-known trademark, and whether a respondent conceals his/her identity and/or replies to the complaint. Respondent here did not formally respond to the Complaint, and used a privacy service. Respondent further provided an undeliverable address to the Registrar. Given Complainant's multinational presence and media reports, noting the composition of the disputed domain name, the Panel finds that Respondent was likely aware of Complainant's trademark rights at the time of registering the disputed domain name.

Therefore, the Panel finds sufficient evidence that Respondent registered and used the disputed domain names in bad faith for purposes of paragraph (4)(a)(iii) of the Policy.

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 <kitepharmas.com> be transferred to Complainant.

/Lorelei Ritchie/

Lorelei Ritchie

Sole Panelist

Date: March 21, 2023