

## **ADMINISTRATIVE PANEL DECISION**

Orion Oyj v. Loammi Girardello

Case No. D2023-4650

### **1. The Parties**

The Complainant is Orion Oyj, Finland, represented by Roschier (Brands), Attorneys Ltd., Finland.

The Respondent is Loammi Girardello, United States of America ("United States").

### **2. The Domain Name and Registrar**

The disputed domain name <orionpharmaceutical.com> is registered with Domain.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 9, 2023. On November 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (Domain Privacy Service FBO Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 on November 17, 2023.

On November 20, 2023, a party claiming to be (or to represent) the beneficial holder of the disputed domain name sent an informal communication to the Center.

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 the Respondent of the Complaint, and the proceedings commenced on November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. The Respondent submitted an informal reply to the Center on November 20, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on January 9, 2024. 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 is a pharmaceutical company organized under the laws of Finland. It develops and manufactures human and animal medicines, and the active ingredients of medicines, with a particular focus on oncology and pain management.

The Complainant is the owner of trademark registrations in various countries including, for example:

- Germany trademark registration number 1038781 for the word mark ORION, registered on September 23, 1982, for goods and services including pharmaceutical products in International Class 5;
- International trademark registration number 714663 for the word mark ORION PHARMA, registered on June 4, 1999 in International Class 5, and designating a total of 18 countries in Europe and Central Asia; and
- European Union trademark registration number 001466408 for a figurative trademark ORION PHARMA, registered on March 26, 2001 in International Class 5. The trademark comprises a logo in which the initial letter "O" features a "tail" which extends horizontally over the whole of the device (the "Complainant's Logo").

The Complainant is the owner of the domain name <orionpharma.com>, which resolves to its principal website at "www.orion.fi". That website prominently features the Complainant's Logo.

The disputed domain name was registered on July 19, 2022.

The Complainant submits evidence that the disputed domain name has resolved to a website at "www.orionpharmaceutical.com". The website is headed "Orion Pharma". The website states "Orion has numerous job opportunities available. Please visit our CAREERS page for more info." The relevant webpage includes both a contact email address and a web form for submission, with boxes labelled "Name", "Email" and "Message".

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that it is a publicly listed company, with in-house sales operations in 27 European countries, as well as six in the Asia-Pacific region. It states that it has over 3,500 employees around the world and earned sales revenues in excess of EUR 1.3 billion in 2022.

The Complainant submits that the disputed domain name is confusingly similar to its trademarks, and that the inclusion of the term "pharmaceutical" does not distinguish it from either the Complainant's ORION or ORION PHARMA marks.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never licensed or permitted the Respondent to use its ORION or ORION PHARMA trademarks. It also asserts that the corporation referred to on the Respondent's website, namely Orion Pharmaceutical, Inc., with an address in New Jersey, United States, does not correspond to any United States registered corporation.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It provides evidence of two LinkedIn profiles for “Orion Pharma” and “Nelson Diaz” respectively. Mr Diaz is described as “Staffing Manager at Orion Pharmaceutical”. Each of the LinkedIn profiles includes a link to the Respondent’s website at “www.orionpharmaceutical.com”. The Complainant also provides evidence that, prior to the Complainant serving relevant take-down notices, each of the profiles featured the Complainant’s Logo, this being particularly prominent in the case of the “Nelson Diaz” profile. Both the profiles indicate that career opportunities are available and invite interested parties to make contact.

The Complainant also produces an email from an individual who appears to have responded to the possibility of employment referred to in the “Nelson Diaz” LinkedIn profile. The email attaches email correspondence received from “[...]@orionpharmaceutical.com” and e-signed by Mr Diaz which acknowledges the individual’s application and sets out certain resulting criteria and questions. The individual complains to the Complainant that he has been advised that he must complete “a certification class, that is very expensive,” but has been unable to locate either Mr Diaz or the Complainant’s offices.

The Complainant submits, therefore, that the Respondent is impersonating the Complainant and one of its employees for financial gain, i.e., to induce Internet users to pay for an expensive certification class.

## **B. Respondent**

The Respondent did not file a formal Response. However, in the email to the Center dated November 20, 2023 referred to above, the sender stated “I am just the webmaster” and identified the “Registrant” of the disputed domain name as an individual (other than the Respondent) with an address in Florida, United States. The sender stated that the owner of the disputed domain name is a company based in Florida which places pharmaceutical representatives with distributors for two large pharmacy benefit managers (“PBMs”). The email stated that further information would be provided upon the signing of a non-disclosure agreement in order to protect vendors’ information, as “[t]he PBM industry is well known to be cut throat and competitive...” The email continues that the company has no affiliation with the Complainant and has made no claim to that effect.

## **6. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 Complainant has established that it is the owner of registered trademark rights in respect of the marks ORION and ORION PHARMA. The Panel finds the disputed domain name to be confusingly similar to both of these trademarks, since the inclusion of the term “pharmaceutical” in the disputed domain name does not prevent either trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark or trademarks in which the Complainant has rights.

## **B. Rights or Legitimate Interests**

In the view of the Panel, the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Panel does not find that the Respondent has provided any persuasive reply to the Complainant's submissions, whether by way of the informal email dated November 20, 2023 or otherwise. The Respondent's email of November 20, 2023 contains cursory statements concerning the use of the disputed domain name, but provides no actual evidence of such. Moreover, for the reasons set out below, the Panel finds that the Respondent registered and has used the disputed domain name dishonestly to target the Complainant's trademark rights. These circumstances cannot give rise to rights or legitimate interests and the Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

## **C. Registered and Used in Bad Faith**

The Complainant has established to the satisfaction of the Panel that its trademarks ORION and ORION PHARMA are distinctive in nature and are widely recognized in the pharmaceutical industry as referring to the Complainant and its business.

The Complainant has provided evidence that the disputed domain name has been used in conjunction with LinkedIn profiles which have displayed the trademark ORION PHARMA as well as the Complainant's Logo, and have been used to solicit employment applications for which a "certification" fee is apparently charged. The Respondent having failed to provide any persuasive answer to the Complainant's submissions, the only conclusion that can reasonably be drawn is that the Respondent registered and has used the disputed domain name with the intention of impersonating the Complainant and misleading Internet users into believing that the disputed domain name must be legitimately connected with the Complainant.

The Panel therefore finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

## **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, <orionpharmaceutical.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: January 24, 2024