

Decision for dispute CAC-UDRP-100235

Case number **CAC-UDRP-100235**

Time of filing **2011-04-05 08:57:04**

Domain names **medicalexpocom**

Case administrator

Name **Tereza Bartošková (Case admin)**

Complainant

Name **Benoit THIERCELIN**

Complainant representative

Organization **CHAIN AVOCATS**

Respondent

Organization **MEDICALEXPO.com**

OTHER LEGAL PROCEEDINGS

N/A

IDENTIFICATION OF RIGHTS

The complainant, M. Thiercelin, is the owner of CTM and US trademarks registrations "MEDICAL EXPO" No.8761231 for goods and services class 35, 38 and 42 and "MEDICAL EXPO" No.77944722 for the following goods and services:
- "IC 035. US 100 101 102. G & S: Organization of exhibitions for commercial or advertising purposes; arranging and conducting of trade show, conferences, congresses and forums for commercial or advertising purposes; retail and wholesale store services via Internet ; bringing together, but not transporting, products thereof for the benefit of others, thereby enabling customers to view and purchase the goods; presentation of goods in communications media for retail purposes; presentation of public sales on the Internet for retail purposes; advertising services via the Internet; advertising services, namely, maintaining and providing a virtual exhibit of the goods and services of others over the Internet; arranging and conducting online trade show exhibits

IC 041. US 100 101 107. G & S: Organization of exhibitions for cultural or educational purposes; arranging and conducting of colloquiums, seminars, conferences."

The Complainant attached print-outs from the OAMI and USPTO databases showing that the Complainant, M. Thiercelin is the owner of the aforementioned trademark registrations that are identical to the domain name "MEDICAL EXPO.COM".

These trademarks are part of a family of marks owned by M. Thiercelin, which are summarised as follow: "VIRTUALEXPO" (CTM, French and US trademarks registration No.004783981, 008676579), "ARCHIEXPO" (CTM, French and US trademarks

registration No.008676801), "NAUTICEXPO" (CTM, French and US trademarks registration No.008676371).The print-outs are found in Annex 2.

This family of marks correspond to several Company part of a group, each of them owned by M. Thiercelin, "MEDICALEXPO" (registered under N° 519 015 945 of the Marseille RCS); VIRTUALEXPO (registered under N° 432 439 701 of the Marseille RCS); ARCHIEXPO (registered under N° 503 266 140 of the Marseille RCS); and NAUTICEXPO (registered under N° 503 266 223 of the Marseille RCS)

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the Czech Arbitration Court (the CAC) pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the CAC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a Complainant) submits a complaint to a dispute resolution service provider, such as the CAC, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name that is the subject of the Complaint in the document that accompanies this Coversheet.

A copy of this Complaint has also been sent to the Registrar with which the domain name that is the subject of the Complaint is registered.

By submitting this Complaint to the CAC the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

CZECH ARBITRATION COURT

Benoit THIERCELIN

7, Avenue André Roussin
F- 13016 Marseille FRANCE

(Complainant)

-v-

Disputed Domain Name :
MEDICALEXPO.COM

2262 Applebrook Drive
Commerce Township, MI 48382
US

(Respondent)

www.medicalexpo.com

COMPLAINT

(Rules, para. 3(b))

I. Introduction

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 24, 1999 and the CAC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. The Parties

A. The Complainant

(Rules, para. 3(b)(ii) and (iii))

[2.] The Complainant in this administrative proceeding is

M. Benoit THIERCELIN

[3.] The Complainant's contact details are:

Address: 7, Avenue André Roussin
F- 13016 Marseille
FRANCE

Telephone: +33 4 91 03 80 90
Fax: +33 4 91 03 80 38

[4.] The Complainant's authorized representative in this administrative proceeding is:

Maître Cyril CHABERT
Avocat à la Cour d'appel de Paris
3, rue de Logelbach
75017 Paris
FRANCE
Tél : 00 33 (0)1 44 01 46 00
Fax : 00 33 (0)1 44 01 46 01
E-mail : cyril.chabert@chain-avocats.com

[5.] The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: e-mail

Address: cyril.chabert@chain-avocats.com

Contact: Maître Cyril CHABERT

Material including hardcopy

Method: fax

Address: 3 rue de Logelbach – 75017 PARIS

Fax: 00 33 (0)1 44 01 46 01

Contact: Maître Cyril CHABERT

B. The Respondent

(Rules, para. 3(b)(v))

[6.] According to the information available on the whois database,

<http://www.networksolutions.com/whois-search/medicalexpocom>, the Respondent in this administrative proceeding is

MEDICALEXPO.COM

Copies of the printout of the database search conducted on February 16, 2011 are provided as Annex 3.

[7.] All information known to the Complainant regarding how to contact the Respondent is as follows according to the whois (Annex 3):

MEDICALEXPO.COM

3630 Elmview

West Bloomfield, MI 48324

US

Administrative Contact:

Scott,

stCartwright@MSN.COM

MedicalExpo.Com

2262 applebrook Dr

Commerce, MI 48382

US

Phone : 999 999 9999

Fax: 999 999 9999

Technical Contact:

Scott,

STCartwright@msn.com

MedicalExpo.Com

2262 Applebrook Dr

Commerce, MI 48382

US

Phone: 248-360-7782

Fax: 248-360-7571

These information were apparently not correct and the Respondent's details have been changed in the complaint according to the Registrar verification response that indicated a different address to the CAC :

Apparently the registrant details are not:

MEDICALEXPO.COM

3630 Elmview

West Bloomfield, MI 48324

US

But:

MEDICALEXPO.COM

2262 Applebrook Drive

Commerce Township, MI 48382

US

M. Thiercelin has taken good notice that the information contained in the Whois on www.networksolutions.com (Annex 3) were not correct and has changed the Respondent's in regard with the new details.

III. The Domain Name and Registrar

(Rules, para. 3(b)(vi) and (vii))

[8.] This dispute concerns the domain name identified below:

<http://www.medicalexpo.com>

[9.] The registrar with which the domain name is registered is:

NETWORK SOLUTIONS, LLC.

IV. Jurisdictional Basis for the Administrative Proceeding

(Rules, paras. 3(a), 3(b)(xv))

[10.] This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy.

V. Factual and Legal Grounds

(Policy, paras. 4(a), (b), (c); Rules, para. 3)

[11.] This Complaint is based on the following grounds:

1. Background

The complainant, M. Thiercelin, is the owner of CTM and US trademarks registrations "MEDICAL EXPO" No.8761231 for goods and services class 35, 38 and 42 and "MEDICAL EXPO" No.77944722 for the following goods and services:

- "IC 035. US 100 101 102. G & S: Organization of exhibitions for commercial or advertising purposes; arranging and

conducting of trade show, conferences, congresses and forums for commercial or advertising purposes; retail and wholesale store services via Internet ; bringing together, but not transporting, products thereof for the benefit of others, thereby enabling customers to view and purchase the goods; presentation of goods in communications media for retail purposes; presentation of public sales on the Internet for retail purposes; advertising services via the Internet; advertising services, namely, maintaining and providing a virtual exhibit of the goods and services of others over the Internet; arranging and conducting online trade show exhibits

IC 041. US 100 101 107. G & S: Organization of exhibitions for cultural or educational purposes; arranging and conducting of colloquiums, seminars, conferences.”

We attached print-outs from the OAMI and USPTO databases showing that the Complainant, M. Thiercelin is the owner of the aforementioned trademark registrations that are identical to the domain name “MEDICAL EXPO.COM”. The print-outs are found in Annex 1.

These trademarks are part of a family of marks owned by M. Thiercelin, which are summarised as follow: “VIRTUALEXPO” (CTM, French and US trademarks registration No.004783981, 008676579), “ARCHIEXPO” (CTM, French and US trademarks registration No.008676801), “NAUTICEXPO” (CTM, French and US trademarks registration No.008676371).The print-outs are found in Annex 2.

This family of marks correspond to several Company part of a group, each of them owned by M. Thiercelin, “MEDICALEXPO” (registered under N°519 015 945 of the Marseille RCS); VIRTUALEXPO (registered under N° 432 439 701 of the Marseille RCS); ARCHIEXPO (registered under N°503 266 140 of the Marseille RCS); and NAUTICEXPO (registered under N°503 266 223 of the Marseille RCS). As you see, M. Thiercelin is also the owner of an identical company name “MEDICALEXPO” that exploit its trademark.

He has developed a concept of companies that offer online exhibitions of goods and services, virtual shows where net surfers can find many products and services regarding a certain topic. He is exploiting through these companies several websites (Annex 5):

- www.virtual-expo.com : a platform that creates and runs virtual exhibitions
- www.directindustry.com : The Virtual Industrial Exhibition
- www.nauticexpo.com :The Virtual Boat and Marine Show
- www.archiexpo.com :The Virtual Architecture Exhibition

VIRTUALEXPO’s platform represents more than 15 000 exhibitors, 7 million unique visitors every month and 65 employees in the VirtualExpo Group that was founded in 1999.

M. Thiercelin has created in 2009 a new company, MEDICALEXPO, to be part of VIRTUAL EXPO’s group, and has registered a US and a CTM trademark in order to start a new activity on the same business model, regarding medicals products and services, to offer Virtual shows on the medical domain to its clients and net surfers.

2. The disputed domain name is confusingly similar to trademark in which the Complainant have rights

The complainant M. Thiercelin is the owner of CTM and US trademark registrations No.8761231 and No.77944722 “MEDICAL EXPO”. The disputed domain name is identical to the registered trademarks of the Complainant.

3. The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name.

Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

The disputed domain name, medicalexpo.com has been registered in 1997 and was renewed in 2006 until march 2012 (Annex 3).

The litigious domain name does not load. When typing www.medicaexpo.com the website cannot be loaded, an error occurs and the webpage informs that:

“The computers that run www.medicaexpo.com are having some trouble. Usually this is just a temporary problem so you might want to try again in few minutes”

This “temporary problem” is not that temporary as the Complainant, M. Thiercelin has not ever been able to access the domain name, which is never loading. The print-outs are found in Annex 4.

In fact this non use of the domain name is passive holding, meant to prevent from anyone, including trademarks owners, to be able to register the domain name medicaexpo.com and use a corresponding domain name.

This passive holding for 14 years prevents the trademarks owner from using the rights conferred by his marks.

Accordingly, the Complainants submit that the disputed domain name has been registered without rights or legitimate interest in respect of the domain name

4. The domain name is registered and being used in bad faith

The domain name is registered and is used in bad faith. The purpose of the registration of the disputed domain name has been to prevent the Complainant, legitimate owner of MEDICAEXPO trademark from reflecting the mark in a corresponding domain name while not exploiting the disputed domain name.

UDRP rules provide several ways of establishing bad faith. One is where the domain name is inactive and is not being use. The domain name medicaexpo.com is not used, it is an inactive website that only intends to block the registration from other registrant and especially the Complainant.

The fact that the Respondent does not use the domain name, and that the disputed domain name does not load, shows intention to prevent from third parties from reflecting their trademarks in corresponding domain names.

Trying several times, M. Thiercelin has not been able to get any answer from the Respondent (see annex 5,6 and 7).

Accordingly, the disputed domain name is registered in bad faith.

5. Conclusion

The Respondent has registered and is passively holding a domain name that is identical to the trademark registered and used by the Complainant.

The domain name is registered and renewed to prevent third parties from reflecting their trademarks in corresponding domain names.

Despite good faith attempts, the Complainant have not managed to find anything that would suggest that the Respondent has rights or legitimate interest in the holding the domain name.

Accordingly, the Complainant respectfully submit that the disputed domain name is transferred to the Complainant, M. Thiercelin.

Paris, 22 March 2011

Cyril CHABERT

Enclosed:

1. Print-outs from OAMI and USPTO's trademark databases
 2. Print-outs from OAMI and USPTO's trademark databases
 3. Whois of medicalexpo.com from www.networksolutions.com
 4. Print-outs from www.medicalexpo.com
 5. Recorded delivery mail dated January 13th, 2010
 6. Recorded delivery mail dated March 12th, 2010
 7. Two Recorded delivery mails dated January 27th, 2010
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PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The complaint is accepted on the grounds that, in default of any other procedurally compliant evidence attesting to the contrary, the Complainant has to the satisfaction of the Panel, shown:

1. the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights
2. the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).
3. the Domain Name has been registered (or at least re-registered) and is being used in bad faith In this latter respect the Panel is following the reasoning advanced in *Telstra Corporation Limited v. Nuclear Marshmallows (telstra.org)* which construed "use" broadly to include inactive use. It stated: "[P]aragraph 4(b) recognises that inaction (e.g. passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith." Passive holding is explicitly alleged by the Complainant and has also been closely looked at by the Panel which finds that one of the critical factors in this case is the lack of evidence of good faith use. If one is in good faith when registering a domain name, then the intention is understandably to use it for the purposes of one's business or activity. If it remains unused for an unreasonable length of time then such registration is open to accusation of constituting „passive holding“ Irrespective of whether the domain name was registered before or after some of the Complainant's marks, the current holder of the domain name does not seem to have used it or currently be using it. In fairness to all parties concerned, this Panel would have been prepared to consider, say, a case of genuine identical names established in different jurisdictions which just happened to be identical by pure co-incidence. In this case however we received no evidence which may have persuaded one that such was the case and when a TLD lies un-used for a length of time and this lack of use is then un-contested, the allegation of bad faith specifically made in this case regarding „passive holding“ remains un-challenged so on the balance of probability one is inclined to accept it. The panellist personally

tried loading the domain (several weeks or months after the Complainant claimed to have done so) but to no avail. Had one found a genuine business there or some form of appropriate use then this decision would have been made more difficult. As it is, with no apparent good faith use and in a no response situation it is reasonable to accept the complainant's allegation since no contrary evidence was received nor could one independently detect any proof to the contrary.

In the light of the above, denying the use of the contested domain name to the Complainant would unreasonably prevent the trademarks owner from using the rights conferred by his marks and it is therefore reasonable and appropriate within the letter and intent of the UDRP rules that the complaint is accepted and domain name transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MEDICALEXPO.COM**: Transferred

PANELLISTS

Name	Joseph Cannataci
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DATE OF PANEL DECISION 2011-05-15

Publish the Decision
