Decision for dispute CAC-UDRP-100666

Case number	CAC-UDRP-100666
Time of filing	2013-09-11 14:57:03
Domain names	cetaphyl.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Galderma S.A.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Organization	PrivacyProtect.org

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner, inter alia, of the International Trademark no. 559326, registered on August 21, 1990 for CETAPHIL.

FACTUAL BACKGROUND

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

Galderma SA is one of the world's leading dermatology companies, founded in 1981. In 2012, the Complainant reported sales of 1.6 billion euros. Over 4200 employees work for Galderma throughout the world, and its products are distributed in over 70 countries.
In 1947, Cetaphil® Cleansing Lotion was invented by a pharmacist as a safe and simple formula with which to mix dermatological remedies. By 1964, Cetaphil® Cleansing Lotion was recognized by dermatologists as a stand-alone skin care product that was gentle enough for all skin types or conditions. What started as a simple formulation recommended as an effective alternative to traditional soap cleansers is known today as Cetaphil® Gentle Skin Cleanser. Now, more than 60 years later, Cetaphil product offerings have grown substantially, and Galderma is leveraging advanced skin care technology to continue to bring customers new products to compliment those already known and loved. The cornerstone of the

Cetaphil® brand is innovative technology anchored in time-tested truth. Cetaphil products are recommended by dermatologists more than any other brand. Indeed, Cetaphil is a famous and well-known trademark, as evidenced by the numerous awards and recognitions received over the years.
Complainant's Cetaphil mark is registered in numerous countries and territories throughout the world. The disputed domain cetaphyl.com was created on June 2005, which is subsequent to Complainant's first use and registration of the famous CETAPHIL mark, WIPO reg. No. 559326, issued on August 21,1990 for products included in class 3.
Cetaphyl.com is phonetically equivalent, and confusingly similar to the famous Cetaphil trademark because the distinction is in a single letter. The practice of typosquatting has been consistently regarded in previous UDRP decisions as creating domain names confusingly similar to the relevant mark. The deliberate introduction of a typographical error or change, as is the case here, does not negate confusing similarity. The practice of typosquatting is designed to take advantage of Internet users' typographical errors, which means the typo must be confusingly similar by design.
The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use its trademark. The Respondent is not known by the disputed domain name as evidenced by the Whois record, nor has the Respondent acquired any trademark rights in respect of the domain name.
There is also no legitimate interest in typosquatting.
The Respondent used the disputed domain name to host a commercial website that provides competing web portal links and general advertisement links to a variety of businesses and products, none of which is a bona fide offering of goods or services under the Policy.
The disputed domain is currently inactive and this inactive use is not a bona fide offering of goods or services. Not only is Respondent’s use of the disputed domain names not a bona fide offering of goods or services under the Policy, but it is consistent with the illustration of bad faith in paragraph 4(b)(iv) of the Policy.
The Respondent intended to disrupt the Complainant's business either by diverting confused users to the websites of third parties from which the Respondent may gain commercially, such as through collecting click-through-fees or by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of Respondent’s websites.
With respect to the current inactivity, Respondent’s failure to provide content with its disputed domain name evinces registration and use in bad faith. Furthermore, there is proof that the domain reverted to a site with commercial links for a period of time.
Given the well-known trademark at stake, which has a very high recognition on a worldwide basis, it is inconceivable that Respondent registered the disputed domain name without having in mind the Complainant's trademark. Given the Complainant's established rights in its mark and that Respondent registered a domain name "so obviously connected" with Complainant, Respondent's actions suggest "opportunistic bad faith" in violation of the Policy.
Respondent's typosquatting behavior is, in and of itself, also evidence of bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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

1) In the Panel's view and according to previous decisions rendered by both WIPO and CAC, a domain name which contains an obvious misspelling of a trademark must be considered as being confusingly similar to this trademark in case the misspelled trademark remains the dominant or principal component of the domain name, see WIPO Case No. D2006-1043 <edmundss.com> and CAC Case n. 100604 <rcoketmail.com>. In the present case there is only one letter in the difference between the trademark CETAPHIL and the disputed domain name <cetaphyl.com> and the substitution of the letter “y” for the letter “i” does not distinguish the disputed domain name from Complainant’s mark in any significant way. On the contrary, the Panel believes that the disputed domain name is a clear case of typosquatting a domain name.

2) The Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorised Respondent to use or apply for any domain name identical or similar to CETAPHIL. The Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. On the contrary, it appears that the Respondent used the disputed domain name to direct consumers interested in the Complainant products to its website giving said consumers the impression to have reached a site which is owned by or associated with CETAPHIL. The Respondent has not shown any facts or elements to justify prior rights or legitimate interests in the disputed domain names

3) The disputed domain name was registered by the Respondent on June 2005, almost 15 years after the mark CETAPHIL was registered with WIPO by the Complainant. The Complainant has used the CETAPHIL trademark worldwide and so intensively that it is impossible to believe that Respondent had not knowledge of the Complainant's trademark rights at the time of registration of the disputed domain name. Furthermore, given the distinctive trademark at stake, which has a very high grade of recognition on a worldwide basis, it is inconceivable that the disputed domain name had been registered by the Respondent without having in mind the Complainant’s trademark. Therefore, in the Panel's view, the domain name <cetaphyl.com> was registered in bad faith. Respondent used the disputed domain name to host a commercial website that provides competing web portal links and general advertisement links to a variety of businesses and products. Currently, the disputed domain name is inactive. Therefore, there is no evidence that Respondent registered the domain name to provide a bona fide offering of its goods and services, see Meyerson v. Speedy Web, FA 960409 - Nat. Arb. Forum May 25, 2007 - finding that where a respondent has failed to offer any goods or services on its website other than links to a variety of third-party websites, it was not using a domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use
The disputed domain name is now inactive. This circumstance does not prevent a finding of bad faith use. Previous Panels have held that the passive holding of a domain name can be considered as use in bad faith (see WIPO Case No. D2000-0003 <telstra.org> and WIPO Case No. D2011-0421<browns.com>).
In consideration of the above, the Panel deems that the domain name in dispute was registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CETAPHYL.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2013-10-23

Publish the Decision