Decision for dispute CAC-UDRP-101145

Case number	CAC-UDRP-101145
Time of filing	2016-01-12 11:38:05
Domain names	mobic.xyz

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Vernon Pursley

OTHER LEGAL PROCEEDINGS

None so far as the Panel is aware

IDENTIFICATION OF RIGHTS

The Complainant relies on an international registration of the trademark MOBIC for antirheumatic products, anti-inflammatory products and plasters, designating a large number of countries, under No. 563599 registered on 28 November 1990. The Complainant's evidence also indicates that it has unregistered rights in the trademark MOBIC, which members of its group have used as the brand of an anti-inflammatory drug.

FACTUAL BACKGROUND

The Complainant is part of a large pharmaceutical group. Members of the group supply a non-steroidal anti-inflammatory drug under the trademark MOBIC. The Complainant is the proprietor of this trademark registered through international registration No. 563599 registered on 28 November 1990 in respect of antirheumatic products, anti-inflammatory products and plasters in a large number of countries. The Complainant also registered this mark with the Trademark Clearing House on 16 April 2014.

The disputed domain name <mobic.xyz> (the "Domain Name") was registered by the Respondent on 18 October 2015 (i.e. the Complainant's trademark predates the registration of the disputed domain name). It has been directed to a website which displays sponsored links relating to the Complainant's MOBIC product and other anti-inflammatory products.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant contends that it has rights in the trademark MOBIC and that the Domain Name is identical to this trademark.

The Complainant submits that the Respondent is not commonly known by the Domain Name and states that he is not related in any way to the Complainant or authorised to use the Complainant's MOBIC trademark. The Complainant further contends that the use of the Domain Name by the Respondent for a website displaying sponsored links as summarised above does not constitute evidence of rights or legitimate interests. On the contrary, according to the Complainant, the Respondent has sought to divert Internet users to its website and to benefit from the Complainant's goodwill under the MOBIC mark. The Complainant submits that it has established a prima facie case that the Respondent has no rights or legitimate interests in the Domain Name and that the burden is now on the Respondent to displace that case.

The Complainant alleges that the Domain Name was registered and is being used in bad faith. The Complainant contends that the Respondent must have been aware of the Complainant's MOBIC mark when he registered the Domain Name, since the mark was well-known and had also been registered with the Trademark Clearing House. The Complainant also draws attention to the links referring to the Complainant's MOBIC product on the website located by the Domain Name. The Complainant submits that the Respondent intentionally registered and has used the Domain Name to attract Internet users to his website for commercial gain in the form of click-through commissions by creating a likelihood of confusion with the Complainant's trademark.

The Complainant requests a decision that the Domain Name be transferred to it.

RESPONDENT:
The Respondent states that he is planning to use the Domain Name for a Mobile Internet Community related website which will not conflict with the Complainant's trademark.

The Respondent argues that the Complainant has failed to make a prima facie case that he lacks rights or legitimate interests in respect of the Domain Name. He also submits that the Domain Name is not identical or confusingly similar to the mark MOBIC, which he says is a common and generic term.

The Respondent states that the Domain Name was directed to a parking page displaying links as described above without his knowledge or authorisation, and that when he became aware of this he immediately instructed the Registrar to change the direction. He denies any attempt to profit from the Complainant's mark.

The Respondent submits that the Complaint should be dismissed.

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). The Domain Name is in fact identical to the Complainant's trademark MOBIC apart from the addition of the top level domain name suffix which should generally be discounted when making the comparison required by the first element of the UDRP. The Panel has no doubt that many Internet users would assume that the Domain Name locates a website of the Complainant providing information about its MOBIC drug.

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).

The Respondent is not commonly known by the Domain Name and is not connected with or authorised by the Complainant.

The Respondent has not used the Domain Name for a bona fide offering of goods or services or made demonstrable preparations for such use. Although the Respondent asserts that he intends to use the Domain Name for a Mobile Internet Community related website, he has not provided any evidence of demonstrable preparations for such use in accordance with paragraph 4(c)(i) of the UDRP.

Nor is the Respondent making legitimate non-commercial or fair use of the Domain Name. On the contrary, the Respondent has made illegitimate, commercial and unfair use of the Domain Name by allowing it to be directed to a website with sponsored links relating to the Complainant's MOBIC product and other anti-inflammatory drugs. The Respondent is responsible for the use made of the Domain Name. In any case, even if the Respondent were not responsible for this use, it would not confer on him any right or legitimate interest in the Domain Name.

BAD FAITH

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

The Panel is satisfied that the Respondent knew of the Complainant's trademark MOBIC when he registered the Domain Name, having regard to the undisputed evidence that it is well-known and the fact that the Complainant had registered the mark with the Trademark Clearing House prior to the Respondent's registration of the Domain Name.

In all the circumstances, the Panel finds that the Respondent has used the Domain Name intentionally to attract Internet users to his website to attract Internet users to his website for commercial gain in the form of click-through commissions by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of that website.

In accordance with paragraph 4(b)(iv) of the UDRP this finding constitutes evidence of registration and use in bad faith. In the Panel's view, the Respondent's wholly unsubstantiated assertion of an intention to use the Domain Name for a Mobile Internet Community related website is insufficient to displace this presumption.

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

Domain Name identical to Complainant's mark apart from gTLD suffix.

Respondent not commonly known or authorised by the Complainant. No evidence of use or demonstrable preparations to use the Domain Name for a bona fide offering of goods or services. No legitimate non-commercial or fair use.

Use of the Domain Name intentionally to attract Internet users to his website for commercial gain in the form of click-through commissions by creating a likelihood of confusion with the Complainant's mark. Presumption under para 4(b)(iv) of the UDRP not displaced by any other evidence.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOBIC.XYZ**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2016-02-26

Publish the Decision