Decision for dispute CAC-UDRP-101189

Case number	**CAC-UDRP-101189**
Time of filing	**2016-03-02 12:20:38**
Domain names	**lexapro.xyz, buy-lexapro.xyz**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**Anna Kuryndina**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that the trademark LEXAPRO is registered in more than 100 countries around the world (the "LEXAPRO Trademark").

FACTUAL BACKGROUND

Complainant states that it "was founded in 1915 and is now is an international pharmaceutical company engaged in the research, development, production, marketing and sale of pharmaceuticals across the world. The company's products are targeted at disorders such as depression and anxiety, psychotic disorders, epilepsy and Huntington's, Alzheimer's and Parkinson's diseases."

Complainant further states that it "is one of the world's leading pharmaceutical companies working with brain disorders. In 2014, the company's revenue was USD 3.4 billion). Today Lundbeck employs approximately 5.600 people worldwide."

Complainant further states that it "markets a number of different pharmaceuticals for the treatment of brain disorders. The most recently launched compounds include: Cipralex/Lexapro® (depression), Ebixa® (Alzheimer’s disease), Azilect®

(Parkinson’s disease), Xenazine® (chorea associated with Huntington's disease), Sabril® (epilepsy), Sycrest® (bipolar disorder) and Onfi® (Lennox-Gastaut syndrome)."

Complainant alleges that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights because <lexapro.xyz> is identical to the LEXAPRO Trademark; and <buy-lexapro.xyz> "incorporates the complainants registered trademark combined with the generic and descriptive term 'buy' as prefix. The Complainant claims that for the purpose of a UDRP proceeding, when a well-known and invented mark is combined with a common noun or adjective, that combination constitutes a domain name which is confusingly similar to an invented and well known mark."

Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain names because, inter alia, "Respondent has not received any license or consent, express or implied, to use the complainant´s trademark Lexapro®, in a domain name or in any other manner from the Complainant, nor has the Complainant acquiesced in any way to such use or application by the Respondent"; "[a]t no time did the Respondent have authorization from the Complainant to register the disputed domain names"; "nor is the Respondent otherwise commonly known in reference to the names"; and "since the domain names do not appear to be used it is evident that the Respondent does not make a legitimate noncommercial or fair use of the domain names."

Complainant alleges that the domain names were registered and are being used in bad faith because, inter alia, "the Respondent had positive knowledge as to the existence of the Complainant’s trademark at the time the Respondent registered the domain name" given the "distinctive nature and intensive use of" the LEXAPRO Trademark; "due to the distinctive nature and intensive use of the Complainant´s trademark Lexapro®, it is immediately inconceivable that the Respondent will be able to use the disputed domain name for any plausible purpose that would not be infringing the Complainant’s rights"; and "the Respondent’s use of a privacy service... under these circumstances gives rise to an inference of bad faith use and registration."

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are 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 Names (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 Names have been registered and are 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

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the LEXAPRO Trademark.

As to whether the Disputed Domain Names are identical or confusingly similar to the LEXAPRO Trademark, the relevant

comparison to be made is with the second-level portion of the domain names only (i.e., “lexapro” and "buy-lexapro"), as it is well-established that the generic Top-Level Domain (i.e., “.com”) may be disregarded for this purpose. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”), paragraph 1.2 (“The applicable top-level suffix in the domain name (e.g., ‘.com’) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration), except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark.”).

Notably, each of Disputed Domain Names contains the LEXAPRO Trademark in its entirety. Previous panels have found that “the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy.” Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903. See also Hoffmann-La Roche Inc., Roche Products Limited v. Vladimir Ulyanov, WIPO Case No. D2011-1474 (“when a domain name wholly incorporates a complainant’s registered mark, that may be sufficient to establish confusing similarity for purposes of the Policy”).

In addition, inclusion of the word "buy" in one of the the Disputed Domain Names is simply a "descriptive or non-distinctive word[] and do[es] not distinguish the disputed dispute name[] from the" LEXAPRO Trademark. Links (London) Limited d/b/a Links of London v. “Barack Hussein Obama Jr”, et al., WIPO Case No. D2011-0878 (transfer of, inter alia, <buylinksoflondon.com> and <linksoflondonbuy.com>).

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names for the reasons set forth above. Under the Policy, “a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. WIPO Overview 2.0, paragraph 2.1.

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the Policy: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location.

Complainant cites the landmark decision Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, which established the test for bad faith in the event of a Respondent’s “passive holding” of a domain name. In that case, the panel found bad faith as the result of the following circumstances:

(i) the Complainant’s trademark has a strong reputation and is widely known, as evidenced by its substantial use…,

(ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,

(iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Here, this Panel finds the presence of four of the five of these circumstances (that is, all but those set forth in paragraph (iv) above).

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEXAPRO.XYZ**: Transferred
2. **BUY-LEXAPRO.XYZ**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2016-04-06

Publish the Decision