Decision for dispute CAC-UDRP-101194

Case number	**CAC-UDRP-101194**
Time of filing	**2016-03-14 13:25:51**
Domain names	**lexapro.click, lexapro.link**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**Eleonora Gulevskaya**

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

Various trade marks around the world comprising or incorporating the term LEXAPRO including:

(i) Registered Community trade mark 2041259 for the word mark LEXAPRO in class 5 dated 16 December 2003; and

(ii) Registered International trade mark no 778106 for the word mark LEXAPRO in class 5 dated 16 March 2002.

FACTUAL BACKGROUND

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

The Complainant H. Lundbeck A/S 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.

Lundbeck 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.

Lundbeck 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).

The trademark Lexapro® is registered in more than 100 countries around the world.

The disputed domain names lexapro.click and lexapro.link are both identical to the trade mark Lexapro®, in which the complainant holds rights. The Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the top level domain designation in the domain name – here .click and .link - is irrelevant in the comparison of a domain name to a trademark.

The 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. At no time did the Respondent have authorization from the Complainant to register the disputed domain names.

Further, to the best knowledge of the Complainant, the Respondent has no rights in the contested domain names. The Respondent did thus not use the domain names as a trademark, company name, business or trade name prior to the registration of the disputed domain name, nor is the Respondent otherwise commonly known in reference to the names.

Also, to the best knowledge of the Complainant, the Respondent has no legitimate interest in the contested domain names.

Finally, 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.

The Complainant´s trademark Lexapro® is registered in the recorded country of residence of the Respondent, Russia, through the Madrid Protocol.

The Complainant claims that because of the distinctive nature and intensive use of the Complainant´s trademark Lexapro®, the Respondent had positive knowledge as to the existence of the Complainant's trademark at the time the Respondent registered the domain names.

The disputed domain names are not actively used.

The Complainant claims that 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 names for any plausible purpose that would not be infringing the Complainant's rights.

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 Panel disagrees with the Complainant that the Domain Names and its trade marks are identical for the reasons set out in Philip Morris USA Inc. v. Marlboro Beverages / Vivek Singh, WIPO Case No. D2014-1398. However, in practice it does not matter as the Domain Names are clearly confusingly similar to the Complainant's marks, comprising in each case the mark alone in conjunction with the "click" or "link" top level domains.

There is no obvious legitimate use of the Domain Names and the most likely explanation as to why they were registered and held is to take unfair advantage in one way or another of the reputation of the Complainant’s marks. In the circumstances the Complainant has demonstrated that the Respondent has no rights or legitimate interests in the Domain Names.

Further, this is one of those cases where it is difficult to see how the Domain Names might be used in a manner that did not take unfair advantage of the Complainant’s mark and which would not involve bad faith (as to which see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 as elaborated upon by the three person panel in Mr. Talus Taylor, Mrs. Anette Tison v. Vicent George Warning/ Fayalobi Interaction Management, WIPO Case No. D2008-0455). In the circumstances, the Complainant has demonstrated that the Respondent has registered and held the Domain Names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEXAPRO.CLICK**: Transferred
2. **LEXAPRO.LINK**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2016-04-11

Publish the Decision