Decision for dispute CAC-UDRP-101291

Case number	**CAC-UDRP-101291**
Time of filing	**2016-09-06 09:42:05**
Domain names	**lexapro.website, lexapro.press, lexapro.host, lexapro.online, lexapro.tech, lexapro.club**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**Albert Sadykov**

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other pending proceedings.

IDENTIFICATION OF RIGHTS

The Complainant enjoys protection for his trademark Lexapro around the world, inter alia by the EUTM Lexapro 002041259, registered on February 23, 2004 in class 5.

FACTUAL BACKGROUND

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

The Complainant H. Lundbeck A/S was founded in 1915 and is now 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 2015, the company's revenue was USD 2.2 billion. Today Lundbeck employs approximately 5.500 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.

Whereas the disputed domain names were, in accordance with the Complaint, not active at the time of the filing of the Complaint, they were at the time of the decision.

All the contested domain names

lexapro.website
lexapro.press
lexapro.host
lexapro.online
lexapro.tech
lexapro.club

were active at that time and showed a table of online pharmacies where Lexapro products including Generic Lexapro products are advertised.

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

The disputed domain names are on their 2nd level domain identical to the trademark Lexapro of the Complainant. The Panel therefore considers the disputed domain name to be confusingly similar to the trademarks in which the Complainants have rights in accordance with paragraph 4(a)(i) of the Policy.

The Complainant's assertions that the Respondent is not commonly known by the disputed domain names and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain names on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. The Panel therefore finds that the Respondent does not have rights or legitimate interests in

the Domain Names.

Due to the intensive use of the trademark worldwide, the Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain names. The Complainant has not authorized the Respondent to make use of a designation which is identical to its marks. This Panel does not see any conceivable legitimate use that could be made by the Respondent of the particular domain names without the Complainant's authorization.

It is the consensus view of Panels (following the decision Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org>) that a lack of active use of the domain names without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include that no response to the complaint has been filed.

Alternatively the actual use probably being put on the internet after filing of the Complaint, justifies this decision. Here are, inter alia, generic lexapro products being advertised.

The circumstances of this case, in particular also the advertising links in the field of the Complainant accordingly also indicate that the Respondent registered and uses the disputed domain names primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain names to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

Accordingly, 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) by registering a confusingly similar domain name being aware of the trademarks of Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEXAPRO.WEBSITE**: Transferred
2. **LEXAPRO.PRESS**: Transferred
3. **LEXAPRO.HOST**: Transferred
4. **LEXAPRO.ONLINE**: Transferred
5. **LEXAPRO.TECH**: Transferred
6. **LEXAPRO.CLUB**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2016-10-20

Publish the Decision