Decision for dispute CAC-UDRP-101455

Case number	CAC-UDRP-101455
Time of filing	2017-02-23 09:08:33
Domain names	AGGRENOX.ONLINE

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Vladimir Talko

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant registered aggrenox trademarks, EM Nr. 000731984, on March 4, 1999 which is valid until 21.01.2018 and IR Nr. 738016 on July 28, 2000 which is valid until July 28, 2020, both are active and were registered before the Respondent registered the disputed domain name and registered with the Trademark ClearingHouse.

The Complainant also provided evidence that it owns a domain name containing the name “aggrenox”, <Aggrenox.com>, registered well before the Respondent registered the disputed domain name.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
The Complainant is a pharmaceutical company based in Ingelheim am Rhein, Germany. The Complainant is active in the pharmaceutical business for many decades and has as group about 46.000 employees. One of its products is the prescription drug named AGGRENOX.

The Respondent is an Ukrainian citizen, using a hidden domain holder name, who is represented by his Registry which is based in Panama. On February 1st, 2017 the Respondent registered the disputed domain name. He uses the disputed

domain name for commercial purposes and offers on www.aggrenox.online pharmaceuticals called "agrenox dipyridamole online".

The Complainant, represented by the company nameshield, Ms. Maxime Benoist, France, filed the Complaint against the Respondent claiming that the Respondent registered the disputed domain name <aggrenox.online> without rights or legitimate interest and in bad faith. Therefore the registration should be declared abusive and the disputed domain name transferred to the Complainant.

The Respondent didn't react to the Complainant's contentions.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

THE COMPLAINANT:
The Complainant principally makes the following assertions:

The Complainant is an international operating German pharmaceutical company who owns a portfolio of brands including the word "AGGRENOX" in several countries, such as the European registration number 000731984 registered on March 04th 1999, and international registration number 738016 registered since June 28th 2000. The Respondent is the owner of the disputed domain and uses it for commercial purpose. The information on <aggrenox.online> damages the reputation of the Complainant's product and violates AGGRENOX trademarks. The Complainant referred to the CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP <dulcolax.xyz>. The remedy the Complainant sought concerning the disputed domain name is transfer of the disputed domain name <AGGRENOX.ONLINE> to the Complainant.

RESPONDENT:
NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

It is necessary for the Complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel finds that the disputed domain name <Aggrenox.online> is identical to the trademarks of the Complainant.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Further it argues that the Respondent is not related to the Complainant.

Moreover, the Complainant contends and provides evidence that the disputed domain name resolves to a website that offers AGGRENOX pharmaceutical drugs in competition with the Complainant. The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Competing use is not considered a bona fide offering of goods or services, nor a legitimate non-commercial or fair use. The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website with buttons links named "buy", "sale" and "order" and that the Respondent has no legitimate interests in respect of the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant also asserted and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that <Aggrenox.online> is identical to the prior trademark AGGRENOX of the Complainant, as registered with the Trademark ClearingHouse. The Complainant also referred to the distinctiveness and reputation of its AGGRENOX trademarks.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contended that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant’s trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Had the Respondent wanted to present a bona fide criticism site then it would have been well advised to have included some negative modifier in its domain name and to have restricted itself to objective and reasoned criticism on its website. Reference is made also to: CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - dulcolax.xyz and WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

Furthermore, the Respondent is using a hidden identity. But this argument is not to be discussed further because bad faith is evident, whatsoever.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under 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. **AGGRENOX.ONLINE**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2017-03-22

Publish the Decision