Decision for dispute CAC-UDRP-101453

Case number	CAC-UDRP-101453
Time of filing	2017-02-23 08:58:19
Domain names	MIRAPEX.CLUB

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Daniel Kobelau

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings regarding the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the Holder of several Trademarks including the EU trademark MIRAPEX <w> (registration no. 003364585, registered on 25 January 2006) and a German national trademark for MIRAPEX <w> (registration no. 39619612, registered on 10 January 1997). The Complainant has registered its MIRAPEX <w> at the Trademark Clearinghouse and is the holder of a long portfolio of domain names including the word MIRAPEX.

The Respondent is the holder of the domain name MIRAPEX.CLUB, registered on 5 February 2017.

FACTUAL BACKGROUND

The Complainant is a pharmaceutical group of companies whose main business areas are Human Pharmaceuticals and Animal Health. The Complainant manufactures a prescription medicine called MIRAPEX (pramipexole dihydrochloride) for treating Parkinson's decease.

The Respondent is a private individual from Russia named Daniel Kobelau.

The disputed domain name was registered by the Respondent on 5 February 2017. The Complainant submitted the

complaint on 17 February 2017 and amended complaint on 23 February 2017.

PARTIES CONTENTIONS

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 not shown that the Respondent has 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 not shown that the Respondent registered or is using the disputed domain name 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 the Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The disputed domain name consists of the whole trademark with the additional suffix .CLUB. The suffix is to be disregarded when assessing confusing similarity between domain names and other rights.

No administratively compliant Response has been filed by the Respondent and in accordance with the UDRP Rule 5(f) the Panel must then decide the dispute based upon the complaint, in the absence of exceptional circumstances. It is up to the Panel to decide whether the Complainant has made out a prima facie case, meaning that the Panel is not bound to transfer the disputed domain name to the Complainant solely based on the lack of Response by the Respondent. On the other hand the Panel takes into consideration that the Respondent did have time to file a Respond but chose not to.

Considering that the disputed domain name was registered on the 5 February 2017 and that the complaint was filed on 17 February 2017 (and amended complaint was filed on 23 February 2017), the Respondent had only been the proprietor of the disputed domain for two weeks before the Complainant filed the complaint. The Panel is not asserted that the two weeks of "non-use" is in itself enough for the Complainant to have established a prima facie case of lack of rights or legitimate interests of the Respondent. The Panel will hereafter examine whether the Respondent has provided any other evidence of the lack of rights and legitimate interests of the Respondent which supports the contentions of the Complainant.

The Panel has conducted its own investigation at the time of the Decision and the Respondent is still not actively using the disputed domain name.

The Complainant contends that the Respondent has no affiliation with nor is authorized by the Complainant and is in no way related to its business. The Complainant also contends that no Trademark license has been granted from the Complainant to the Respondent, that the Respondent is not using the disputed domain name to make a bona fide offering of goods or services and that the Respondent is not making a legitimate non-commercial or fair use of it either.

It is also the contention of the Complainant that MIRAPEX has no dictionary meaning. The Panel does not agree entirely since "MIRA PEX" can as an example mean "WONDERFUL SPONSOR" in Latin. The generic term could be of interest to a broad scope of individuals and companies, in connection with the suffix .CLUB like i.e. sport clubs.

Considering the very short period of non-use of the disputed domain name and the fact that the disputed domain name even if only in theory can have a generic meaning in Latin, the Panel concludes that the Complainant has not established a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has registered the disputed domain name in bad faith based on the fact that the Complainant is a worldwide well known pharmaceutical laboratory, that the trademark used in the disputed domain name has distinctive character and that a Google-search of the trademark would reveal that the trademark is used significantly by the Complainant.

As noted above, the word MIRAPEX can mean "WONDERFUL SPONSOR" in Latin why it is not asserted that the trademark has distinctive character. The disputed domain name can be regarded as consisting of generic Latin terms registered with a .CLUB suffix, and therefore the registration has not necessarily taken place in bad faith.

On the other hand the Panel notes that the Complainant is a well-known pharmaceutical laboratory and MIRAPEX considered a well-known brand of drugs for the treatment of Parkinson's disease.

Based on the reasons set out above, the Panel concludes that the Complainant has not established a prima facie case showing that the Respondent registered or is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **MIRAPEX.CLUB**: Remaining with the Respondent

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2017-03-29

Publish the Decision