Decision for dispute CAC-UDRP-101934

Case number	CAC-UDRP-101934
Time of filing	2018-03-23 09:17:25
Domain names	mayolyspindlerpharma.net

Case administrator

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

Complainant

Organization	LABORATOIRES MAYOLY SPINDLER

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Peter West

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 name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of certain trademark registrations that consist of or contain the mark MAYOLY SPINDLER (the “MAYOLY SPINDLER Trademark”), including the following:

Int’l Reg. No. 234,671 for a stylized mark that primarily consists of the text “laboratoires MAYOLY-SPINDLER” (registered August 15, 1960).

French Reg. No. 3,996,956 for MAYOLY SPINDLER (registered April 10, 2013)

French Reg. No. 1,585,547 for a stylized mark that primarily consists of the text MAYOLY SPINDLER (registered April 9, 1990)

FACTUAL BACKGROUND

Complainant states that it was founded in 1929 and is “a pharmaceutical company” that “develops, manufactures, and markets pharmaceutical products” and that it “offers products in various areas, such as gastroenterology, rheumatology,

ENT, general medicine, and consumer health solutions."

The disputed domain name was created on November 21, 2017, and is being redirected to Complainant's website at http://www.mayoly-spindler.fr/ .

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant has rights in and to the MAYOLY SPINDLER Trademark as a result of the registrations cited above. The disputed domain name is confusingly similar to the MAYOLY SPINDLER Trademark because "the addition of word 'Pharma' (for Pharmaceutical) and the generic Top-Level Domain ('gTLD') suffix '.NET' does not change the overall impression of the designation as being connected to the Complainant's trademark."

Paragraph 4(a)(ii): Respondent has no rights or legitimate interests in respect of the disputed domain name because, inter alia, Respondent "is not related in any way to the Complainant's business"; "Respondent is not affiliated with him nor authorized by him in any way to use the trademark"; "Complainant does not carry out any activity for, nor has any business with the Respondent"; "Respondent is not commonly known by the domain name"; "[t]he domain name redirects to the Complainant's website"; and "Complainant sent a cease and desist on January 9th 2018," to which "Respondent did not reply."

Paragraph 4(a)(iii): The disputed domain name was registered and is being used in bad faith because, inter alia, "[t]he domain name redirects to the Complainant's website"; and "Respondent did not reply to the cease and desist letter."

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar

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

As to whether the disputed domain name is identical or confusingly similar to the MAYOLY SPINDLER Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "mayolyspindlerpharma") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is

viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the disputed domain name contains the MAYOLY SPINDLER Trademark in its entirety. As stated in WIPO Overview 3.0, section 1.7, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

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

No Rights or Legitimate Interests

Complainant has argued that Respondent has no rights or legitimate interests in respect of the disputed domain name because, inter alia, Respondent "is not related in any way to the Complainant's business"; "Respondent is not affiliated with him nor authorized by him in any way to use the trademark"; "Complainant does not carry out any activity for, nor has any business with the Respondent"; "Respondent is not commonly known by the domain name"; "[t]he domain name redirects to the Complainant's website"; and "Complainant sent a cease and desist on January 9th 2018," to which "Respondent did not reply."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

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 UDRP.

Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (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.

Here, Complainant has appears to argue that bad faith exists pursuant to paragraph 4(b)(iv) of the UDRP because the disputed domain name redirects to Complainant's own website. Numerous panels have repeatedly found that the Respondent registered and is using a disputed domain name in bad faith where, as here, the Respondent is redirecting the disputed domain name to the Complainant's own website. For example, one panel wrote: "Redirecting the disputed domain name to the Complainant's own website implies… bad faith: Such behavior includes the risk that the Respondent may at any time cause Internet traffic to redirect to a website that is not that of, or associated with, the Complainant (see MySpace, Inc. v. Mari Gomez, WIPO Case No. D2007-1231), and may increase customer confusion that the disputed domain name is

somehow licensed or controlled by the Complainant." Mandarin Oriental Services B.V. v. Domain Administrator, Matama, WIPO Case No. D2017-0615.

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

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAYOLYSPINDLERPHARMA.NET**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2018-05-01

Publish the Decision