Decision for dispute CAC-UDRP-101965

Case number	**CAC-UDRP-101965**
Time of filing	**2018-04-18 10:59:14**
Domain names	**atrovent.xyz**

Case administrator

Name	**Sandra Lanczová (Case admin)**

Complainant

Organization	**BOEHRINGER Ingelheim Pharma GmbH & Co. KG**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**Pelres Investments Ltd.**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceeding which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

United States Trade Mark Registration No. 1026053 ATROVENT

FACTUAL BACKGROUND

The Complainant is a member of a German pharmaceutical group of companies. This group was founded by Albert Boehringer in Ingelheim am Rhein in 1885. Today the group has become a global pharmaceutical enterprise with approximately 46,000 employees.

The Complainant has used the ATROVENT Trademark in relation to a pharmaceutical preparation for the treatment of chronic obstructive pulmonary disease since the 1970s. It has become well known for this purpose. It has registered this trade mark in a number of countries, including United States Trade Mark Registration No. 1026053, which has a registration date of 2 December 1975. Furthermore the Complainant is the registrant of a number of domain names containing the word ATROVENT, including <atrovent.com> which it has held since 1996.

The disputed domain name was registered by the Respondent on 29 March 2018. It has been used to redirect users to a

website that offers various pharmaceutical products for sale, including the Complainant's products and the Complainant's competitors products.

In registering the domain named the Respondent provided its address as being in the United Kingdom.

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, 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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

1) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

1) RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant has demonstrated to the satisfaction of the Panel that it has registered rights in the trade mark ATROVENT that predates the registration of the disputed domain name by the Respondent.

The disputed domain name varies from this trademark only by way of the addition of the generic top level domain ("gTLD") ".xyz", which are unlikely to distinguish the disputed domain name in the eyes of an internet user from the trademark. The Panel finds that ".xyz" does no more to distinguish the disputed domain name than if a more common gTLD, such as ".com", was adopted in lieu of it. The Panel refers to Walgreen Co v. Usama Nizamani Forum Case No. FA 1801001767423 in which the ".xyz" gTLD was equally given little or no weight in deciding whether a disputed domain name was similar to a registered trademark.

Reliance on registered rights in a single jurisdiction is sufficient for the purposes of establishing rights referred to in paragraph 4(a)(i) of the UDRP (please see Koninklijke KPN N.V. v. Telepathy, Inc., WIPO Case No. D2001-0217; WIPO Case Nos. D2012-0141 and D2011-1436).

The disputed domain name is confusingly similar to the ATROVENT trademark.

2) NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to the WHOIS extract is "Pelres Investments Ltd". This name bears no resemblance to "ATROVENT". Further, there is no basis to conclude legitimate interests from any use of ATROVENT on the website to which the domain name resolved.

In such circumstances, and in absence of a Response which would rebut the apparent lack of rights or legitimate interests, the Panel concludes that the Respondent has no rights or interests in the disputed domain name (see the reasoning of the Panelist in Bloomberg L.P. v. Global Media Communications a/k/a Dallas Internet Services Forum Case No. FA 0105000097136).

3) BAD FAITH

As mentioned above, the disputed domain name has been used to redirect users to a website that offers various pharmaceutical products for sale, including the Complainant's products and the Complainant's competitors´ products. In one instance such products are sold on the same web page right above and below each other.

In this sense the website has the appearance of a genuine and legitimate online retail store and the Panel has no reason to doubt that it is. However it is not the content of this website alone that is the problem. The problem is the registration and use of the disputed domain name to direct consumers to such a site that clearly is not aimed merely at describing or promoting the Complainant's product but is aimed at selling competing products side by side for commercial gain.

The task of assessing if a Respondent has registered and used a domain name in bad faith is most certainly one which must observe the particular circumstances of the Respondent but it is also still an objective one. In the Panel's view what ought to be asked is whether an objective and reasonable person in the position of the Respondent acting with proper and honest motive would refrain from registering and using the disputed domain name in the manner that the Respondent did.

In the present case an objective and reasonable resident of the United Kingdom acting with proper and honest motive would not seek to register the disputed domain name and use it in the profit making manner that the Respondent did. The likelihood of confusion for consumers is apparent and foreseeable. They are likely to assume they are to be directed to a site that is aimed at the promotion and sale of the Complainant's goods. Instead they are directed to site selling various competing products. Therefore what is likely to occur is a case of initial interest confusion, by which the Panel means that consumers are initially diverted to the Respondent's website due to the confusingly similar domain name expecting to be taken to the Complainant's website however instead they are taken to the Respondent's online retail store and presented with options to buy competing products. The "fact that such confusion may be dispelled" at that point "does not negate the fact of initial confusion" (See Ticketmaster Corporation v. Iskra Service WIPO Case No. D2002-0165).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ATROVENT.XYZ**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2018-05-25