Decision for dispute CAC-UDRP-102012

Case number	CAC-UDRP-102012
Time of filing	2018-05-21 09:19:18
Domain names	mobic.app

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	MobiCap

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of several registrations of the trademark “MOBIC”, including International Registration No. 563599 “MOBIC” <w>, registered on 28 November 1990, designating several European countries as well as Switzerland and China.

Furthermore, the Complainant is the proprietor of the EUIPO trademark registration No. 2355998 “MOBIC” registered on 29 August 2001 and US trademark registration No. 75183276 “MOBIC”, registered on 17 October 1996.

The Complainant has also registered “MOBIC” with the TradeMark ClearingHouse on 15 April 2014.

The Respondent is the holder of the domain name <mobic.app>, registered on 8 May 2018, which has not been active since its registration.

FACTUAL BACKGROUND

The Complainant is a family-owned pharmaceutical group of companies founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein, Germany and is a global research-driven pharmaceutical enterprise with over 50,000 employees.

The Complainant mainly focuses on three business areas, namely human pharmaceuticals, animal health and biopharmaceuticals.

In 2017 alone, net sales of The Complainant, including subsidiaries amounted to about EUR 18.1 billion.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of this Panel, shown the disputed domain name is identical or confusingly similar to the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The factors needed to be taken into account are, on the one hand, that the Respondent (1) does not have an active website, and (2) that no administratively compliant Response has been filed by the Respondent. However, these factors do not, in themselves, constitute a lack of legitimate interest, especially due to the short period of time from the registration of the disputed domain name and the filing of the Complaint.

On the other hand, the trademark MOBIC is a pharmaceutical trademark and, consequently, infringing use hereof e.g. counterfeited products caries significant dangers to public health, thereby making the appropriate period between the registration of the disputed domain names and the filing of the complaint shorter.

Also, it should be in the interest of the Respondent to quickly clarify any issues regarding the disputed domain name, should they be planning to use said domain in a none-infringing manor.

In conclusion, the Complainant has, to the satisfaction of this Panel, 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

Pursuant to the above, the Complainant has, to the satisfaction of this Panel, shown the disputed domain name has been registered in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

PROCEDURAL FACTORS

This 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

There can be no discussion as to whether the disputed domain name, not including the generic Top-Level Domains ("gTLD") .app, is identical to the rights of the Complainant, and although the Complainant claims that the trademark MOBIC is well-known, sufficient evidence to support this claim has not been presented.

In this respect, it is well established that gTLDs may be disregarded in the assessment under paragraph 4(a)(i) of the Policy.

Secondly, this panel has conducted its own investigation into alternative meanings of the word "MOBIC" in order to establish whether there, in fact, are secondary meanings, including none-dictionary words such as "slang" or the like.

This investigation has not shown any such secondary meaning, in fact, most results refer to the Complainant and the product and Meloxicam which the Websters Dictionary notes is marketed under the trademark "Mobic".

However the above, “MOBIC” might be suggestive of “mobile” thereby making the disputed domain name a reference to mobile applications, e.g. for smartphones. This argument and the subsequent burden of proof, however, rests solely on the Respondent who has not presented it.

Consequently, this panel will base its decision on the facts and evidence presented, which are (1) the disputed domain name is identical to the rights of the Complainant and (2) the trademark appears frequently, if not solely, in searches conducted on http://google .com., making it, if not well-known, then at least widely available. (3) The Complainant’s trademark is a pharmaceutical trademark, consequently, subject to a stricter assessment of similarities between it and other trademarks. (4) the Respondent registered the disputed less than 2 months before the complaint was filed but did present any comments or evidence as to its legality or any rights or interests of the Respondent.

Finally, (5) the Complainant previously, successfully had the domain <mobic.online> (CAC Case No. 101201) transferred to the Complainant.

Given the above, including also the similarities to CAC Case No. 101201, especially between the gTLD .online and .app and their meaning, this Panel finds that the disputed domain name was registered in bad faith as the Respondent should have been aware of the Complainant's trademark MOBIC when the Respondent registered the disputed domain name given the trademark’s reputation. Further, the disputed domain name resumes to an inactive webpage which demonstrates a lack of use in good faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOBIC.APP**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2018-07-01

Publish the Decision