Decision for dispute CAC-UDRP-102220

Case number	CAC-UDRP-102220
Time of filing	2018-11-09 10:05:35
Domain names	mayoly.net

Case administrator

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

Complainant

Organization	LABORATOIRES MAYOLY SPINDLER

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	DomCollect International GmbH

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a number of trademarks containing the term “MAYOLY”, such as International Registration No. 964208 MAYOLY, registered since March 28, 2008.

The Complainant is also the owner of domain names including the trademark "MAYOLY", such as <mayoly.com>, registered since July 22, 2002.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Founded in 1929, LABORATOIRES MAYOLY SPINDLER S.A.S. (the Complainant), is a pharmaceutical company, which develops, manufactures, and markets pharmaceutical products. It offers products in various areas, such as gastroenterology, rheumatology, ENT, general medicine, and consumer health solutions.

The Complainant is the proprietor of a number of trademarks containing the term “MAYOLY”, such as International Registration No. 964208 MAYOLY, registered since March 28, 2008.

The Complainant is also the owner of domain names including the trademark "MAYOLY", such as <MAYOLY.COM>, registered since July 22, 2002.

The disputed domain name was registered on October 16, 2017. It points to a parking page with commercial links in fields related to the Complainant.

The Respondent is not known under the disputed domain name. The Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way to the Complainant's business. The Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way to use the trademark. The Complainant does not carry out any activity for, nor have any business with the Respondent.

The disputed domain name points to a parking page with commercial links in fields related to the Complainant.

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

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According to Paragraph 4(a) of the Policy, the complainant is required to prove each of the following three elements to obtain an order that a domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests 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 has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name is confusingly similar to the Complainant's trademark and domain "MAYOLY". This finding is based on the settled practice of disregarding the top-level suffix in the disputed domain name <MAYOLY.NET> (i.e. ".net") when determining the existence of a likelihood of confusion. The words MAYOLY are identical.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant puts forward that the Respondent is not commonly known by the disputed domain name and that that the Respondent is no way related to the Complainant or has been granted an authorization or license to use the disputed domain name by the Complainant. The Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that disputed domain name points to a parking page with commercial links in fields related to the Complainant. The Complainant contends that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The Respondent is also in no way commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent.

In the absence of a Response and given the reputation of the Complainant and its trademarks and domain as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks and domain "MAYOLY" at the time of registering the disputed domain name <MAYOLY.NET>. Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used (at least passively) in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

As decided in previous cases, domain names resolving to parked websites displaying third party links which most probably results in compensation in the form of "click-through" fees does not constitute a bona fide offering. See e.g. FORUM Case No. FA 1310568, Disney Enterprises, Inc. v. Take Stage. According to the Panel, such a parked website with third-party links was not considered a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy or a legitimate non-commercial or fair use according to paragraph 4(c)(iii) of the Policy.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAYOLY.NET**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2019-03-08

Publish the Decision