Decision for dispute CAC-UDRP-102886

Case number	CAC-UDRP-102886
Time of filing	2020-01-30 09:24:15
Domain names	jardiance.surf

Case administrator

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

Complainant

Organization	Boehringer Ingelheim International GmbH

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Innika

OTHER LEGAL PROCEEDINGS

The Panel is not cognizant of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the international trademark “JARDIANCE”® n° 981336 registered since September 3, 2008.

FACTUAL BACKGROUND

The Complainant is a German family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein.

Ever since, BOEHRINGER has become a global research-driven pharmaceutical enterprise with roughly 50,000 employees. The three business areas of BOEHRINGER are human pharmaceuticals, animal health and biopharmaceuticals. In 2018, net sales of the BOEHRINGER group of companies amounted to around EUR 17.5 billion.

“JARDIANCE”® (Empagliflozin) is a prescription medicine used along with diet and exercise to lower blood sugar in adults with type 2 diabetes, and also to reduce the risk of cardiovascular death in adults with type 2 diabetes who have known cardiovascular disease.

The Complainant is the owner of a numerous portfolio of domain names including the wording “JARDIANCE”, such as

<jardiance.com> registered on April 29, 2008.

The disputed domain name <jardiance.surf> was registered on January 1, 2020.

PARTIES CONTENTIONS

COMPLAINANT

A. The Complainant contends that the disputed domain name is identical to the Complainant's trademark, "JARDIANCE".

B. The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests.

Once such prima facie case is made, a respondent carries the burden of demonstrating rights or legitimate interests in a domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not known in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark "JARDIANCE", or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant claims that the disputed domain name redirects to an online dating website. The Complainant contends that the Respondent used the dispute domain name in a way that fails to confer rights and legitimate interests, as it is used to promote unrelated services.

Thus, the Complainant contends that the Respondent has no legitimate interests in respect of the disputed domain name <jardiance.surf>.

C. The Complainant contends that the disputed domain name <jardiance.surf> is identical to its distinctive trademark "JARDIANCE"®.

The Complainant contends that its trademark predates the registration of the disputed domain name. Finally, a Google search of the term "JARDIANCE" displays results only in relation with the Complainant.

Therefore, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its trademarks, which is an evidence of bad faith.

Furthermore, the Complainant contends that the disputed domain name redirects to an online dating website. The Complainant contends that the Respondent uses its trademark "JARDIANCE"® to promote services unrelated to the domain name, as it redirects to the website: https://cindymatches.com. Consequently, the Complainant asserts that the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Complainant. Respondent is obtaining commercial gain from its use of the disputed domain name and the resolving website.

Therefore, the disputed domain name was registered and is being used in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met and there is no other reason why it would be unsuitable to provide the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

As per evidence on record, the Complainant owns the trademark “JARDIANCE” since September 3, 2008. Based on this, the Panel is satisfied that the Complainant has shown its trademark rights in “JARDIANCE”.

Regarding the confusing similarity between the disputed domain name and the trademark, the Panel notes that the disputed domain name reproduces the trademark in its entirety, namely “jardiance”, notwithstanding the top-level domain “.surf”, which for the purposes of this dispute shall be disregarded.

Based on this, the Panel finds the disputed domain name to be confusingly similar to the Complainant’s trademark.

As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence on record, the uncontested facts indicate that a) the Respondent is not known as the disputed domain name; b) the Respondent is not affiliated with the Complainant and is not authorized to carry out any activity for the Complainant and c) the Respondent has not acquired trademark rights on this term.

Further to this, and as asserted by the Complainant, it appears that the Respondent has been redirecting the disputed domain name to the website: https://cindymatches.com.

These fact pattern lead the Panel to conclude that the Respondent does not have rights or legitimate interests in the disputed domain name.

In conclusion, the uncontested facts on record and on the balance of probability, the Panel determines that the Respondent

has no rights or legitimate interests in the disputed domain name and consequently the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The trademark in this dispute appears to be fanciful trademark, which is likely made up and only have meaning when applied to a good or service. Based on this, the Panel finds that the Respondent ought to be aware of the Complainant's trademarks at the time of registration; a simple search would have sufficed for this. Furthermore, this is an obligation imposed under paragraph 2 of the Policy (see paragraph 3.2.3 of the WIPO Overview 3.0).

In addition to this, the confusingly similar disputed domain name was apparently being used to promote unrelated services, which can evidence a lack of a bona fide offering of goods or services or legitimate non-commercial or fair use.

In light of the circumstances of the case, based on the available records and on balance of probabilities, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the foregoing reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **JARDIANCE.SURF**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2020-02-27

Publish the Decision