Decision for dispute CAC-UDRP-102992

Case number	CAC-UDRP-102992
Time of filing	2020-03-26 08:24:34
Domain names	bioderma.shop

Case administrator

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

Complainant

Organization	NAOS

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	kivernoxoros

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has a portfolio of registrations of the trade mark BIODERMA including International registration no 267207 - for BIODERMA registered since March 19, 1963.

The Complainant owns <bioderma.com> since March 18, 2020.

FACTUAL BACKGROUND

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

Founded in France 40 years ago by Jean-Noël Thorel, a pharmacist-biologist, NAOS is a major player in skincare thanks to its three brands: Bioderma, Institut Esthederm and Etat Pur.

Ranked among the top 10 independent beauty companies, NAOS has more than 2,900 employees located around the world through its international presence based on 46 subsidiaries and long-term partnerships with local distributors selling its branded products BIODERMA in over 90 countries.

The disputed domain name <bioderma.shop> was registered on March 18, 2020 and redirects to the page https://relaxnet.site/.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The disputed domain name is identical to the Complainant's BIODERMA registered trademark adding only the gTLD .shop which is disregarded in this context for the purposes of comparison.

The Respondent does not have any rights or legitimate interest in the disputed domain name.

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a 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, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The information regarding the Respondent is not identified in the WHOIS as the disputed domain name. Thus, the Respondent is not known 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.

Please see for instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).").

The Respondent is not related in any way with the Complainant. The Complainant does not carry out any activity with and does not have any business with the Respondent.

No license or authorization has been granted to the Respondent to make any use of the Complainant's trademarks BIODERMA or to apply for registration of the disputed domain name.

Furthermore, the disputed domain name redirects to the page https://relaxnet.site/. The Respondent did not make any legitimate use of disputed domain name. The Respondent has registered the disputed domain name in order to profit from the notoriety of the Complainant's trademark in order to attract the consumers to another website.

The disputed domain name has been registered and is being used in bad faith

"BIODERMA" has no meaning, except in relation with the Complainant and its products.

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks. Please see for instance CAC Case No. 102484, NAOS v. Frank Nkafu ("Taking into account the distinctiveness and reputation of the trademark "BIODERMA" also recognized by other panels, the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "BIODERMA" when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100) and the Panel shares this view.").

The disputed domain name redirects to the page https://relaxnet.site/. Registering a domain name that is confusingly similar to a famous trademark for the purpose of deceiving Internet users and redirecting them to an unaffiliated website so to benefit commercially may be evidence of bad faith under Policy 4(b)(iv). See International Business Machines Corporation

v. Le Van Hai, D2019-3000 (WIPO Mar. 4, 2020) (“use of the famous IBM trademark found to be in bad faith where “Respondent baits those consumers and then switch them to its products, which is totally unrelated to the products of the Complainant that the consumers may actually search for.”).

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical 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

The disputed domain name registered in 2020 is identical to the Complainant’s registered trade mark BIODERMA adding only the gTLD .shop which does not prevent this identicality under the Policy.

The Respondent is not commonly known by the disputed domain name, is not commonly known by it and is not authorised by the Complainant

The disputed domain name has been pointed to a competing commercial site in an apparent attempt to capitalise on the renown of the Complainant’s distinctive trade mark, diverting Internet users for commercial gain and disrupting the Complainant’s business.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BIODERMA.SHOP**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2020-04-17

Publish the Decision