Decision for dispute CAC-UDRP-102972

Case number	CAC-UDRP-102972
Time of filing	2020-03-19 10:04:53
Domain names	jardiancedosing.com

Case administrator

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

Complainant

Organization	Boehringer Ingelheim International GmbH

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	neeraj manchanda

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of international word trademark “JARDIANCE”, reg. no. 981336, with seniority date 30 April 2008, for goods and services in class 5, pharmaceutical preparations ("Complainant's Trademark").

The disputed domain name <jardiancedosing.com> was registered on 10 February 2020.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) the Complainant is the owner of the Complainant’s Trademark;

(b) the disputed domain name was registered on 10 February 2020;

(c) There is no website under the disputed domain name just the "coming soon" page; and

(d) the Respondent has registered another domain name which includes name of pharmaceutical product of the Complainant <pradaxadosing.com> with the same "coming soon" page.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) disputed domain name is confusingly similar to Complainant’s Trademark;

(ii) the Respondent is not commonly known by the disputed domain name, is not affiliated with the Complainant nor authorized by it in any way to use Complainant’s Trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent. Furthermore, the disputed domain name redirects to a page in construction. The Respondent did not make any use of disputed domain name since its registration and has no demonstrable plan to use the disputed domain name. As a result, Respondent has no rights or legitimate interest in the disputed domain name;

(iii) the term "dosing" included in the disputed domain name demonstrates that the Respondent registered the disputed domain name in knowledge of Complainant's Trademark which is registered and used for pharmaceutical preparations. Also the Respondent did not respond to cease and desist letter sent by the Complainant. The Respondent has registered also another domain name <pradaxadosing.com> confusingly similar to the trademark of the Complainant PRADAXA. These circumstances clearly amount to bad faith of the Respondent in registration and use of the disputed domain name.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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 requires that the complainant proves each of the following three elements to obtain an order that a domain name shall be transferred or revoked:

(i) the 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 domain name; and

(iii) the domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is confusingly similar to Complainant’s Trademark. The disputed domain name fully includes Complainant's Trademark “JARDIANCE” and adds a non-distinctive term "dosing", which is not sufficient to avoid confusing similarity of Complainant's Trademark to disputed domain name.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence 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 in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel agrees with the Complainant that the Respondent must have been aware of the Complainant's Trademark and the brand of pharmaceutical products it represents because of adding the term "dosing" to the disputed domain name. There is no website under the disputed domain name (just the "coming soon" page), the Respondent failed to respond to the Complaint as well as to cease and desist letter sent by Complainant. The Respondent has also registered another domain name confusingly similar to Complainant's Trademark following the same pattern (adding a non-distinctive term "dosing" to

the trademark registered for pharmaceutical product of the Complainant and with the same "coming soon" page). The combination of these circumstances in the opinion of the Panel show that the Respondent could not have been in good faith in registration and use of the disputed domain name.

As a result, the Panel found that the disputed domain name has been registered and is being used by the Respondent in bad faith (within the meaning of 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. **JARDIANCEDOSING.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2020-04-18

Publish the Decision