Decision for dispute CAC-UDRP-102971

Case number	CAC-UDRP-102971
Time of filing	2020-03-19 10:03:42
Domain names	pradaxadosing.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 pending or decided case related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has provided evidence of its trademark registration of the PRADAXA mark.

FACTUAL BACKGROUND

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

The term PRADAXA have been confirmed by a previous Panel in the CAC Case No. 102405, Boehringer Ingelheim International GmbH v. smartpatient gmbh <PRADAXA.app> (“The Complainant has provided evidence of its trademark registration of the PRADAXA mark.”).

The Complainant sent a cease and desist letter to the Respondent in order to know the purpose of this registration. The Respondent did not reply. See LEGO Juris A/S v Thai Dang, WIPO Case No. D2018-1929 ("Respondent’s failure to reply to three cease and desist letters sent by the Complainant is further evidence of bad faith, given all of the other circumstances of this case").

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

1. Identical or confusingly similar

The Complainant contended that the disputed domain name <pradaxadosing.com> is confusingly similar to its registered trademark "Pradaxa". The Complainant also stated that in addition to reproducing the Complainant's trademark "Pradaxa", and addition of the expressions "dosing", which has its common English name easily associated to a drug brand such as Pradaxa, does not obviate such confusingly similarity.

As the Complainant stated, it is well established that the addition of a top level domain would not change the determination that the dispute domain name is identical to the Complainant's trademark. According to WIPO Overview 3.0 §1.11.1, "the applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test". According to WIPO Overview 3.0 § 1.11.2, "the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element."

The Complainant's registered trademark "Pradaxa" is prescription drug developed and owned by the Complainant's company, and the disputed domain name fully incorporate the Complainant's trademark. The addition of common English expressions "dosing", with its neutral connotations, could suggest connections between domain names and registered marks such as the addition of a descriptive term in connection with the mark, should NOT adequately distinguish the domain name from the incorporated mark. In this case, the added terms are not sufficient to escape the finding that the disputed domain name is identical to the Complainant's trademark and does not change the overall impression of the designations as being connected to its trademark.

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still 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 Respondent has offered three arguments to support its contention that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Firstly, the Respondent is not known as the disputed domain name; Secondly, neither license nor authorization has been granted to the Respondent; Thirdly, current websites did not indicate any sign of non-commercial or fair use.

According to the information of the Respondent as provided by the Registrar, the name of the Respondent's organization "Neeraj Manchanda" suggests no relationship to Complainant's well-established business. The Complainant also contended that it does not carry out any activity for, nor has any business with the Respondent. It has never licensed nor authorized the Respondent to make any use of the Complainant's trademark "Pradaxa", or apply for registration of the disputed domain name by the Complainant. In addition, Furthermore, the disputed domain name redirects to a page in construction. Respondent did not make any use of disputed domain name since its registration, demonstrating that the Respondent probably has no legitimate plan making commercial use of the website.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

There are a couple of instances cited by the Complainant that can be used to prove that the disputed domain name is registered and used in bad faith.

Particularly, as Complainant put forward, although the name of the domain registrant suggests no relationship to drug brand "Pradaxa" nor "Jardiance", the Respondent has registered two domain names "pradaxadosing" and "jardiancedosing", suggesting that the Respondent probably has the intention of luring consumers of these or other related medications to the websites. Longer term, this is likely to mislead the Complainant's customer group and taint the business goodwill of the Complainant's. It could also harm privacy interests of the Complainant's customers. UDRP panels have categorically held that the use of a domain name for illegal activity other than to host a website, such as phishing, may constitute bad faith (WIPO Overview 3.0 §3.4).

In addition, the Complainant also showed evidence that the Respondent failed to respond to Cease and Desist Letter sent regarding the disputed domain name. Although failure to respond to Cease and Desist Letter itself alone cannot be used to establish bad faith, a Respondent's failure to reply to these cease and desist letters sent by the Complainant could be used by the Panel to deduce bad faith, especially "given all of the other circumstances of this case." (See LEGO Juris A/S v Thai Dang, WIPO Case No. D2018-1929).

In view of the above, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used 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. **PRADAXADOSING.COM**: Transferred

PANELLISTS

Name	Carrie Shang

DATE OF PANEL DECISION 2020-05-02

Publish the Decision