Decision for dispute CAC-UDRP-103060

Case number	CAC-UDRP-103060
Time of filing	2020-05-14 08:46:10
Domain names	lexapro.space

Case administrator

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

Complainant

Organization	H. Lundbeck A/S

Complainant representative

Organization	Zacco Danmark A/S

Respondent

Name	Ivan Ivanov

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the trademark LEXAPRO (International Registration No. 778106), in many countries including Russia, which was registered on March 16, 2002.

The Complainant also holds several domain name registrations which contain the LEXAPRO trademark, including <lexapro.com>.

FACTUAL BACKGROUND

The Complainant, H. Lundbeck A/S, was founded in 1915 and is now an international pharmaceutical company engaged in the research, development, production, marketing and sale of pharmaceuticals across the world. The Complainant’s products are targeted at diseases within psychiatry and neurology. The Complainant is one of the world's leading pharmaceutical companies working with brain disorders. In 2019, the company's revenue was USD 2.56 billion.

The disputed domain name, <lexapro.space>, was registered on March 22, 2020 previously resolved to a webpage promoted illegal online sales of the Complainant’s LEXAPRO goods and currently resolves to an inactive webpage.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the BOURSORAMA mark on the basis that the disputed domain name wholly incorporates the Complainant's trademark and a generic top-level domain name suffix ("gTLD") ".space" which are insufficient to avoid the finding that the disputed domain name is confusingly similar to its LEXAPRO mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent was not identified in the WhoIs database prior to verification by the registrar. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the LEXAPRO mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's LEXAPRO mark at the time of registration of the disputed domain name. The Complainant also asserts that passive holding or non-use of the disputed domain main would not prevent a finding of bad faith.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 Uniform Domain-Name Dispute-Resolution Policy ("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

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark LEXAPRO.

The differences between the disputed domain name <lexapro.space> and the Complainant's LEXAPRO trademark are the addition of a gTLD ".space".

It is established that the addition of a gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11). It is also established that the addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877).

The disputed domain name consists of the Complainant's LEXAPRO mark and the addition of the gTLD ".space" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark (see Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd., WIPO Case No. D2015-2333; WIPO Overview 3.0, section 1.9).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the LEXAPRO mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the LEXAPRO mark (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that all the details of the registrant on the WhoIs database are blocked by a privacy shield. Thus, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name <lexapro.space> redirected to a webpage that

promoted illegal online sales of the Complainant's LEXAPRO goods. It is categorically held that the use of a domain name for illegal activities such as sale of counterfeit goods or illegal pharmaceuticals can never confer rights or legitimate interests on a respondent and such behaviour is manifestly considered evidence of bad faith (see Walgreen Co. v. Muhammad Azeem / Wang Zheng, Nicenic International Group Co., Limited, WIPO Case No. D2016-1607; WIPO Overview 3.0, section 3.1.4).

It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's LEXAPRO mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463). The Complainant's evidence is also indication that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

In addition, the Respondent did not submit a Response in this proceeding and used a privacy shield to hide their identity, as shown in the WhoIs database page submitted by the Complainant. These are all further indications of the Respondent's bad faith, which were considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name redirects to pages containing PPC links and the fact that no Response was submitted by the Respondent, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEXAPRO.SPACE**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2020-06-15

Publish the Decision