# Decision for dispute CAC-UDRP-103189

| | |
|---|---|
| Case number | CAC-UDRP-103189 |
| Time of filing | 2020-07-24 09:13:13 |
| Domain names | nexgardspectra.com |

## Case administrator

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

## Complainant

| | |
|---|---|
| Organization | Merial |

## Complainant representative

| | |
|---|---|
| Organization | Nameshield (Laurent Becker) |

## Respondent

| | |
|---|---|
| Organization | Savvy Investments, LLC Privacy ID# 14659431 |

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 registrant, among others, of the following trademarks:

- French trademark registration No. 4091161 “NEXGARD SPECTRA”, registered on September 5, 2014, for goods in class 5;

- International trademark registration No. 1227466 “NEXGARD SPECTRA”, registered on October 22, 2014, for goods in class 5.

The disputed domain name was registered by the Respondent on September 3, 2019.

FACTUAL BACKGROUND

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

The Complainant states that it is a French company, world leader in animal health, providing a comprehensive range of veterinary drugs and vaccines for a large number of animal species. The Complainant submits that it employs approximately 6,900 people and operates in more than 150 countries worldwide.

The Complainant points out that it is the owner of several trademarks containing the wording "NEXGARD SPECTRA".

The Complainant states that the disputed domain name is identical to its trademarks "NEXGARD SPECTRA".

Moreover, the Complainant asserts that the addition of the generic top-level domain ".COM" does not change the overall impression of the designation as being connected to the trademark "NEXGARD SPECTRA".

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and that the Respondent is not commonly known by the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant states that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant adds that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks, or apply for registration of the disputed domain name by the Complainant.

The Complainant argues that the Respondent has not demonstrated any preparations to use or has not used the disputed domain name or a trademark corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant observes that the disputed domain name was used to host a website to impersonate the Complainant and attempt to mislead consumers into thinking that the "NEXGARD SPECTRA" products purportedly offered on that website originate from the Complainant. The Complainant underlines that such use demonstrates neither a bona fide offering of services nor a legitimate interest of Respondent.

The Complainant states that the disputed domain name includes its trademark in its entirety and that the website makes clearly reference to the Complainant’s trademark.

The Complainant contends that the Respondent had the Complainant’s trademark in mind when registering the disputed domain name.

The Complainant argues that the content of the website gives the impression that it provides official Complainant’s products, prominently displaying Complainant’s trademark "NEXGARD SPECTRA".

The Complainant notes that there is no information to identify the owner, thereby giving the false impression that the website emanates from the Complainant.

The Complainant contends that this lack of information further supports the registration in bad faith, reinforcing the likelihood of confusion, as Internet users are likely to consider the disputed domain name as in some way endorsed by or connected with the Complainant.

The Complainant contends that the Respondent has registered and used the disputed domain name by intentionally creating a likelihood of confusion with the Complainant’s trademark and business.

The Complainant submits that the Respondent engaged in a pattern of bad faith registration, and listed eight proceedings all of which resulted in the transfer or cancellation of the Respondent's domain names.

The Complainant takes the view that the use of the word “privacy” when filling out the registrant’s name, does not necessarily create a presumption that an entity is in fact a privacy service; it could merely be a name. The Complainant observes that, while it is possible that there is a licensee / beneficial owner of the disputed domain name other than the Respondent, there is no evidence in this record as such. The Complainant contends that when the Respondent was served with a copy of the amended Complaint that alleged that it was a serial cyber-squatter, the Respondent had an opportunity to identify a licensee / beneficial owner of the disputed domain name, if there was one, or to present any substantive response on its behalf, but it chose not to.

The Complainant points out that a previous pattern of bad faith domain name registration may be used as additional evidence of bad faith.

The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(i) The disputed 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 disputed domain name; and

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

## IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark “NEXGARD SPECTRA”, identified in section “Identification of rights” above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant’s trademark.

The disputed domain name differs from the Complainant’s trademark only by the addition of the top-level domain ".COM".

It is well established that merely adding a top-level domain to a trademark is not sufficient to distinguish a domain name from a trademark (see, for example, CAC Case No. 100831).

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not identified in the Whois database as the disputed domain name;

- the Respondent is not commonly known by the disputed domain name;

- the Respondent is not affiliated with nor authorized by the Complainant in any way;

- the Respondent has no rights or legitimate interests in respect of the disputed domain name;

- it 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 trademarks, or apply for registration of the disputed domain name by the Complainant;

- the Respondent has not demonstrated any preparations to use or has not used the disputed domain name or a trademark corresponding to the disputed domain name in connection with a bona fide offering of goods or services;

- the disputed domain name was used to host a website to impersonate the Complainant and attempt to mislead consumers into thinking that the "NEXGARD SPECTRA" products purportedly offered on that website originate from the Complainant.

Taking into account the fact that, based on the information of the Whois database, the Respondent is not commonly known by the disputed domain name, that no business nor authorization exists between the Complainant and the Respondent, that no preparation to use the disputed domain name in connection with a bona fide offering of goods or services was demonstrated, and that a website impersonating the Complainant was used, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

Having this in mind, the Panel accepts the Complainant's argument that the Respondent had the Complainant's trademark in mind when registering the disputed domain name. Indeed, the disputed domain name includes the Complainant's trademark in its entirety and the website contains information about products bearing the Complainant's trademark, therefore it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "NEXGARD SPECTRA" when registering the disputed domain name.

Furthermore, the Panel accepts the Complainant's unchallenged assertions that the website gives the impression to be endorsed or connected with the Complainant and that, for this reason, the Respondent has registered and used the disputed domain name by intentionally creating a likelihood of confusion with the Complainant's trademark and business.

As evidenced by the Complainant, the Respondent is engaged in a cybersquatting pattern of conduct. Indeed, in several cases, the Respondent registered domain names then transferred or cancelled following UDRP proceedings. The Panel considers that this is an additional evidence of bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NEXGARDSPECTRA.COM**: Transferred

## PANELLISTS

| Name | **Michele Antonini** |
|---|---|

DATE OF PANEL DECISION 2020-08-13

Publish the Decision