Decision for dispute CAC-UDRP-103234

Case number	CAC-UDRP-103234
Time of filing	2020-08-19 10:22:42
Domain names	merialequinerebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	MERIAL

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	denko turo

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

(i) International trade mark registration no 672420 dated 20 March 1997 for the word mark MERIAL in classes 5, 9, 10, 16 and 31 designating over 40 territories.

(ii) International trade mark registration no 1272154 dated 15 August 2015 for the word mark MERIAL in classes 5, 9, 10, 16 and 31 designating over 40 territories.

The first of these marks is registered in the name of the Complainant. Although the Complainant has provided material that suggests that the second trade mark is owned by the Complainant, online suggest that in late August or early September 2020 the second of these marks was transferred into the name of "Boehringer Ingelheim Animal Health France".

FACTUAL BACKGROUND

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

In an additional submission filed on 18 September 2018 (in response to the Panel's Procedural Order in these proceedings dated 15 September 2020), the Complainant confirmed that it is a subsidiary of Boehringer Ingelheim and claimed to be "a world leader in animal health, offering a full range of veterinary drugs and vaccines for a large number of animal species, especially 'Equine'". In support of that contention it provided a copy of an online article from the publication "Equus", dated 16 December 2015 and updated 10 March 2017, recording the acquisition of the "Merial" business by Boehringer Ingelheim and valuing that business at 11.4 billion Euros.

The Complainant in that document also contended that the Complainant "communicates its products through the Boehringer Ingelheim's website", although what is actually meant by that is unclear. The Complaint also refers to a page on that website that describes itself as the "Boehringer Ingelheim Equine Rebate Center."

WhoIs details for the disputed domain name (the "Domain Name") exhibited to the Complainant's amended complaint indicate that the Domain Name was registered on 11 April 2020. It has not been used for an active website since registration.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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 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 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.

There was however, a complication in this case which led the Panel to issue a procedural order in these proceedings.

In particular, the Complaint as filed had been poorly prepared. It did not much more than identify a number of trade marks, assert that the Domain Name had not been used since registration and contain a series of legal arguments and quotes from previous UDRP decisions. It contended that it was "inconceivable that the Respondent could have registered the [Domain Name] without actual knowledge of [the] Complainant's rights" but failed to provide basic information such as the nature and extent of the Complainant's business, including the extent to which the marks relied upon had been used in connection with that business at the time that the disputed domain name was registered.

Information of this sort is in nearly all cases necessary for a Panel to consider the issue of whether a domain name has been registered in bad faith.

Nevertheless, it seemed to the Panel that it was likely that the Complainant would be able to cure that deficiency. Accordingly on 15 September 2020, the Panel issues a Procedural Order allowing the Complainant to file a further submission in this respect by no later than 5 pm CET on 18 September 2020.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has at least one registered trade mark in the term "Merial". The Domain Name can only be sensibly read as the term "Merial", combined with the words "Equine" and "Rebates" and the ".com" top level domain. The Complainant's mark is therefore clearly recognisable within the Domain Name. The Complainant thereby holds a mark that is "confusingly similar" to the Domain Name as that term is understood under the UDRP. In this respect see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”). The Complainant has therefore made out the requirements of paragraph 4(a)(i) of the Policy.

Further, the Panel accepts that it is likely that the Respondent was aware of the Complainant's business and marks at the time the Domain Name was registered, given (a) the size of the business conducted under that name at least in 2017, (b) the fact that the term "Merial" has no obvious meaning other than as a reference to the Complainant, and (c) the words "Equine" and "Rebates" appear to be associated with the veterinary activities at least historically engaged in by the Complainant.

Exactly how the term "Merial" has more recently been used by the Complainant is less than clear. The language used in the supplemental submission is opaque and less than satisfactory in this respect. Nevertheless, ultimately the Panel still concludes that the Domain Name was registered and has been held with the intention of taking unfair advantage in some manner of the reputation of the Complainant's mark. Although there is no evidence that the Domain Name has been actively used, this is the only sensible conclusion from the words used in the Domain Name.

There is no right or legitimate interest in holding a Domain Name for such a purpose and the use of a Domain Name in such a manner is evidence that no such right or legitimate interest exists. Further, the registration and holding of Domain Name for such a purpose is registration and use in bad faith.

The Complainant has therefore made out the requirements of paragraph 4(a)(ii) and (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. **MERIALEQUINEREBATES.COM**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2020-09-21

Publish the Decision