

Decision for dispute CAC-UDRP-103610

Case number	CAC-UDRP-103610
Time of filing	2021-03-01 09:34:41
Domain names	merialpetrebatws.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Organization	Fundacion Comercio Electronico
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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 owns trademark registrations including the term “MERIAL”, such as the international trademark MERIAL® n°672420 registered since March 20th, 1997 and the international trademark MERIAL® n° 1272154 registered since August 12th, 2015.

FACTUAL BACKGROUND

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

The Complainant owns trademark registrations including the term “MERIAL”, such as the international trademark MERIAL® n°672420 registered since March 20th, 1997 and the international trademark MERIAL® n° 1272154 registered since August 12th, 2015.

The Complainant states that the disputed domain name is confusingly similar to its trademarks MERIAL®.

The addition of generic terms “PET REBATWS” do not change the overall impression of the designation as being connected to

the Complainant's trademark Merial®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and domain names associated.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to 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 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 trademark Merial®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant's activities.

Besides, the term "Merial" has no signification except in relation to the Complainant, as all the results of a simple Google search are related or refers to the Complainant.

Therefore, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Furthermore, the Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

Finally, the Respondent has already been involved in numerous UDRP cases. For instance CAC Case No. 103516, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringeelheimpetrebates.com> <boehringeringerelheimpetrebates.com>; CAC Case No. 103498, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringerengelheimpetrates.com>.

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).

The Complainant owns trademark registrations including the term "Merial", such as the international trademark Merial® n°672420 registered since March 20th, 1997 and the international trademark Merial® n°1272154 registered since August 12th, 2015. The addition of generic terms "PET REBATS" does not change the overall impression of the designation as being connected to the Complainant's trademark Merial®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". For instance WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

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).

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. For instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).").

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 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 trademark MERIAL®, or apply for registration of the disputed domain name by the Complainant. The Respondent has not appeared to defend the registration, and has lost two prior cases to this Complainant. Therefore, the Respondent fails to meet its burden of proof on this element.

Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant's activities. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. Please see for instance: Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

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).

The disputed domain name is confusingly similar to Complainant's trademark MERIAL®, which has been registered numerous years before the registration of the disputed domain name. Indeed, the term "MERIAL" apparently has no signification except in relation to the Complainant, as all the results of a simple Google search are related or refers to the Complainant. Therefore, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant's activities. Therefore, the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith. For instance WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

Finally, the Respondent has already been involved in numerous UDRP cases, including at least two brought by this Complainant -- such pattern and practice is further, strong evidence of cybersquatting. For instance CAC Case No. 103516, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrebates.com> <boehringeringelheimpetrebates.com>; CAC Case No. 103498, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrbates.com>.

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

The disputed domain name is confusingly similar to Complainant's trademark Merial®, which has been registered numerous years before the registration of the disputed domain name. Indeed, the term “Merial” apparently has no significance except in relation to the Complainant. Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant’s activities. Therefore, the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademarks for its own commercial gain. Finally, the Respondent has already been involved in numerous UDRP cases, including at least two brought by this Complainant - such pattern and practice is further, strong evidence of cybersquatting.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **MerialPetRebatWS.COM**: Transferred

PANELLISTS

Name	Mike Rodenbaugh
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DATE OF PANEL DECISION 2021-03-31

Publish the Decision