

Decision for dispute CAC-UDRP-103590

Case number CAC-UDRP-103590

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Domain names mobic.site

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Name Maksim Antonenko

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 mark MOBIC registered as an International trade mark since 1990 for pharmaceuticals. It owns the domain name <mobic.info>. MOBIC was registered with the Trademark Clearing House in 2014.

FACTUAL BACKGROUND

The Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein.

MOBIC (generic name: meloxicam) is a nonsteroidal anti-inflammatory drug (NSAID). It works by reducing hormones that cause inflammation and pain in the body. It is used to treat pain or inflammation caused by osteoarthritis or rheumatoid arthritis.

The Complainant is the owner of the trademarks MOBIC registered in many countries, of which the international trademark MOBIC n°563599 registered on November 28th, 1990.

The trademark MOBIC was also registered in the TradeMark ClearingHouse (TMCH) on April 16th, 2014.

The Complainant also owns several domain names including the wording “MOBIC”, such as <mobic.info> registered since July 31th, 2001.

The disputed domain name <mobic.site> was registered on February 7th, 2021 and resolves to a page without substantial content. The Complainant’s contentions can be summarized as follows:

1. The Complainant is the owner of the mark MOBIC registered as an International trade mark since 1990 for pharmaceuticals, and registered with the Trademark Clearing House (TMCH) since 2014.
2. The Complainant contends that the disputed domain name <mobic.site> is identical to the trademark MOBIC. The disputed domain name includes in its entirety the Complainant’s trademark MOBIC without any addition of letter or word. The new gTLD “.site” is not sufficient to escape the finding that the domain name <mobic.site> is identical to the trademark MOBIC and does not change the overall impression of the designation as being connected to the trademark of the Complainant.
3. The Complainant mentions as example, WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top-level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

PARTIES CONTENTIONS

The Respondent did not rebut nor reply to the Complainant’s contentions.

RIGHTS

The Panel agrees that the disputed domain name in this case consists of the Complainant’s well-known/famous trade mark MOBIC mark (registered as an International mark for pharmaceutical products and services since 1990) as well as registered in the TradeMark ClearingHouse (TMCH) since 2014, CAC Case No. 101145, Boehringer Ingelheim Pharma GmbH & Co. KG v. Vernon Pursley.

The gTLD “.site” does not prevent the disputed domain name being identical to the Complainant’s MOBIC mark which is the distinctive component of the disputed domain name for the purposes of the Policy.

Hence, 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 Respondent does not have rights or legitimate interests in the disputed domain name, is not commonly known by it and is not authorized by the Complainant nor related in any way with the Complainant. To the contrary, the Panel has confirmed that all search results in the internet for the term “mobic” refer to the Complainant’s drug.

Furthermore, the disputed domain name points to a page without any substantial content. The Complainant contends that the Respondent did not make any use of the disputed domain name since its registration, and hence, this demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Panel notes that the Respondent has not filed any response nor has he presented any basis on which he could conclude that it has a right or legitimate interest in the disputed domain name (as per WIPO Case No. D2000-1164, Boeing Co. v. Bressi).

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 stated that the disputed domain name has been registered and is being used in bad faith due to the following reasons: i) the Respondent registered a domain name which includes a well-known/famous trade mark, ii) the Respondent had constructive knowledge/prior knowledge of the Complainant's rights before registering the disputed domain name, and iii) the non-use of the disputed domain name by the Respondent (resolving to a page without any substantial content).

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and mentions that prior WIPO UDRP panels decisions, have held, that the incorporation of a famous mark into a domain name, coupled with an inactive website has been found to be evidence of bad faith registration and use.

This Panel finds that, in the present circumstances, the Complainant has proved to have rights in its registered trademark MOBIC, with wide and strong reputation internationally, and that the Respondent's lack of proper content at the disputed domain shows a lack of a bona fide offering of goods or services per Policy 4(c)(i) and (iii).

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

i) Identical or Confusingly Similar - The disputed domain name is confusingly similar to the MOBIC well-known mark for which the Complainant has rights since 1990.

ii) Rights or Legitimate Interests- The Respondent does not appear to be commonly known by the disputed domain name, nor has the Complainant authorized the Respondent to use its well-known trademark MOBIC. The Respondent has not rebutted the Complainant's statements and has filed no comments nor response to defend himself. Hence, the Respondent has not provided any legitimate reason why it should be able to use the term "mobic". As such 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.

iii) Registration and Use in Bad Faith - The Panel agrees that, it is highly unlikely that the well-known MOBIC brand of the Complainant was unknown to the Respondent when registering the disputed domain name. The reputation of the Complainant's trademark and that the lack of proper content on the website of the disputed domain name leads to finding of bad faith under the passive holding doctrine (See doctrine under Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). The use and holding of the disputed domain name in the present matter also satisfies the bad faith requirement of paragraph 4(a)(iii) of the Policy, and the Panel finds that as the disputed domain name was registered and 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. MOBIC.SITE: Transferred

PANELLISTS

Name **Laura Martin-Gamero Schmidt**

DATE OF PANEL DECISION **2021-04-06**

Publish the Decision
