

Decision for dispute CAC-UDRP-103736

Case number CAC-UDRP-103736

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Domain names metacam.online

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BOEHRINGER INGELHEIM VETMEDICA GmbH

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Name Gabriella Garlo

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 submitted evidence that it is the registered owner of the following trademark registrations:

- the international trademark registration No. 547717 for "METACAM", registered since 8 January 1990 for class 5 and designated for numerous countries; and
- the international trademark registration No. 1057583 for "метакам" (transliteration of "METACAM"), registered since 22 October 2010 for class 5 and designated in numerous countries.

Furthermore, the Complainant allegedly holds multiple domain names including those with the wording "METACAM". The Complainant submitted evidence that it is the registered holder of the domain name <metacam.com> registered and used since 25 June 2005.

FACTUAL BACKGROUND

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

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. Ever since, BOEHRINGER INGELHEIM has become a global research-driven pharmaceutical enterprise and has today about roughly 52,000 employees. The three business areas of BOEHRINGER INGELHEIM are human pharmaceuticals, animal health and biopharmaceuticals. In 2020, net sales of the BOEHRINGER INGELHEIM group amounted to about EUR 19.6 billion.

The asserted trademark METACAM is used by the Complainant in connection with a medicine for cats and dogs to reduce post-operative pain and inflammation following surgery. It can also be used for lactating cows and calves.

The disputed domain name <metacam.online> was registered on 8 April 2021 and resolves to a parking page with commercial links.

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English. The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant contends that the disputed domain name is identical to the trademark METACAM and that the disputed domain name includes it in its entirety.

The Complainant contends that addition of the New gTLD suffix “.ONLINE” is not sufficient to escape the finding that the disputed domain name is identical to the Complainant's trademark and does not change the overall impression of the designation as being connected to its trademark.

Further, the Complainant mentions that its rights have been confirmed by a previous panel in CAC Case No. 101452, Boehringer Ingelheim Vetmedica GmbH v. Whois Privacy Corp. <metacam.xyz>.

The Complainant further contends that the Respondent has no right or legitimate interest in respect of the disputed domain name. In particular, the Complainant points to the established UDRP caselaw on a prima facie case and argues that the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. The Complainant also states that the Respondent is not identified in the Whois database as the disputed domain name and that 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 further contends that 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. 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 trademarks or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant points out that the disputed domain name resolves to a parking page with commercial links, and that past panels found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Turning to the bad faith argument, the Complainant asserts constructive/prior knowledge of its rights by the Respondent because (i) the disputed domain name is identical to its trademark METACAM which has been registered in the Trade Mark Clearing House (TMCH) since 16 April 2014; and (ii) all the Google results for the term “METACAM” refer to the Complainant's product. Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant finds it reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks.

Furthermore, the Complainant points out that the disputed domain name resolves to a parking page with commercial links. 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 as mentioned in previous UDRP cases.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the word mark "METACAM" (or its transliteration) which were registered long before the registration of the disputed domain name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name. This is true also for the so-called new generic top-level suffixes. Indeed, it has been repeatedly held in numerous UDRP cases that gTLDs such as ".online", ".site" and ".website" have no distinctive character (see for example CAC Cases No. 103323, 103114 and 102865) and would most likely be disregarded by web users, especially given that these words are descriptive for use on the Internet.

The disputed domain name incorporates the Complainant's trademark "METACAM" in its entirety. The Panel therefore finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

B. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name resolves to a parking page with commercial links and consequently has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Panel therefore finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "METACAM". It is well established that mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

In addition, the Panel believes that the Complainant made good arguments and submitted evidence that sufficiently demonstrate the Respondent must have (or should have) been aware of the existence of the Complainant, its trademarks and domain names, as well as its METACAM branded product. It is indeed unlikely that the Respondent would have no prior knowledge of the Complainant and it is equally difficult to find any good faith reason for the registration of the disputed domain name by the Respondent.

Furthermore, typical circumstances demonstrating respondent's bad faith include a situation where 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 trademark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (see Paragraph 4(b)(iv) of the Policy). The fact that the disputed domain name resolves to a parking page with commercial links is a clear and rather typical sign of such bad faith behaviour.

Consequently, the Panel finds that the disputed domain name has been registered and used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. METACAM.ONLINE: Transferred

PANELLISTS

Name
Mgr. Vojtěch Chloupek

DATE OF PANEL DECISION 2021-05-19

Publish the Decision
