

Decision for dispute CAC-UDRP-103888

Case number CAC-UDRP-103888

Time of filing 2021-06-25 09:06:02

Domain names merialoffers.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Organization Fundacion Comercio Electronico

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

Complainant holds the following trademarks for the sign "MERIAL":

- International trademark "MERIAL" No. 672420, dated March 20, 1997, registered for goods in classes 5, 9, 10, 16 and 31, duly renewed; and

- International trademark "MERIAL" No. 1272154, dated August 12, 2015, registered for goods in class 3.

Complainant also operates the domain name <boehringer-merial.com> registered since January 30, 2016.

FACTUAL BACKGROUND

Complainant is the subsidiary of BOEHRINGER INGELHEIM ANIMAL HEALTH, and specialises in the animal health industry.

On June 18, 2021, Respondent registered the disputed domain name <merialoffers.com> which resolves to a parking page with commercial links related to the Complainant's activities.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

- Complainant argues that the disputed domain name is confusingly similar to its Merial trademarks.

Complainant considers that the disputed domain name is confusingly similar to its trademarks as the addition of the generic term "OFFERS" does not change the overall impression of the disputed domain name as being connected to the Complainant's trademarks.

Moreover, Complainant asserts that the addition of the gTLD ".COM" does not change the overall impression of said domain name as being connected to its prior trademarks.

- Complainant further asserts that Respondent does not have any rights or legitimate interests in the disputed domain name.

Complainant recalls that it must make a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, and that once such case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name.

Complainant relies on the available Whois information and argues that Respondent is not identified in the Whois database as the disputed domain name. From that element, Complainant concludes that Respondent is not commonly known by the disputed domain name.

In addition, the Complainant asserts that Respondent is not related to the Complainant, that it does not carry out any activity for, nor has any business with the Respondent. Moreover, the Respondent has not been granted neither license nor authorization to make any use of the Complainant's trademarks Merial, or apply for registration of the disputed domain name by the Complainant.

Finally, Complainant notes that the disputed domain name resolves to a parking page featuring commercial links that relate to Complainant's activity and argues that such use does not amount to a bona fide offering of goods or services or legitimate non-commercial or fair use.

In view of all of the above, Complainant is of the advice that Respondent does not have any right on the disputed domain name and lacks legitimate interest on said domain name.

- Complainant finally comes down to the conclusion that the Respondent's registration and use of the disputed domain name amounts to bad faith.

First, Complainant emphasizes confusing similarity of the dispute domain name <merialoffers.com> with its trademarks Merial, the precedence of the said trademarks, and the fact that almost all results of a Google search are linked to Complainant, to show that Respondent registered the dispute domain name with full knowledge of Complainant's rights and thus in bad faith.

Besides, Complainant holds that the Respondent has attempted to attract Internet users for commercial gain to his own website, in view of the parking page with commercial links hosted on the disputed domain name.

Finally, Complainant mentions that Respondent has already registered in the past domain names comprising its trademarks, and that were subject to alternative dispute resolution procedures.

Therefore, Complainant concludes that Respondent is using the disputed domain name in bad faith.

RESPONDENT:

Respondent did not provide any response to the complaint, and is therefore in default.

RIGHTS

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires Complainant to prove three elements in order to obtain the transfer of the domain name:

- (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.

RIGHTS

Complainant shown it has valid trademark rights in the "MERIAL" sign.

The Panel regrets that Complainant mentioned two international trademarks without specifying in which countries they are protected to facilitate the Panel's appreciation of their validity. However, upon a check on WIPO's databases, the Panel notes that Complainant has indeed obtained protection for "MERIAL" in different countries such as Romania, Spain, Federation of Russia.

The Panel agrees and considers Complainant's trademark rights in the sign MERIAL are established.

The Panel also agrees that the disputed domain name is confusingly similar to the disputed domain name as it reproduces Complainant's trademarks "MERIAL", which also precedes the disputed domain name, with the addition of the generic term "OFFERS" and the gTLD ".COM" which do not permit to discard the likelihood of confusion with the "MERIAL" trademark. Under Policy 4(a)(i), top-level domains are indeed generally disregarded in the similarity test. For recent case law, see ARCELORMITTAL (SA) v. Milen Radumilo, Case No. 102379 (CAC March 6, 2019) : "As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity"); see CANAL + FRANCE v. Franck Letourneau, WIPO Case No. DTV2010-0012, <canalsat.tv>".

Besides, the Panel finds that the addition of an attractive term such as "OFFERS" would cause confusion in the consumers' minds and would lead them to think that the disputed domain name is affiliated to Complainant, offering its services with a discount.

As a result, the Panel finds that Complainant has satisfied Policy 4(a)(i).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant shall make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy 4(a)(ii), for the burden to then shift to Respondent. This standard and burden of proof have been established through continuous case law, see LESAFFRE ET COMPAGNIE v. Tims Dozman, Case n° 102430 (CAC May 2, 2019) "The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name."

Complainant asserts that, based on the available Whois information, Respondent is not commonly known under the disputed domain name. Previous panels have relied on such finding to conclude that Respondent lacks rights or legitimate interests in the disputed domain name in this situation: “The Complainant contends that no evidence suggests that the Respondent has been known in any way by the disputed domain name or by the distinctive part “AVAST”. (...) On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, 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.” (Avast Software s. r. o. v. Milen Radumilo, Case n° 102384 (CAC April 25, 2019).

Complainant further argues that Respondent has never been allowed by Complainant to use Complainant’s trademark MERIAL, nor apply for registration of the disputed domain name. Complainant adds that Respondent does not carry out any activity for, nor has any business with the Respondent.

Complainant further argues that the disputed domain name resolves to a parking page with commercial links related to the Complainant’s activities. Frequently, Panels have found that such passive holding of a domain name redirecting consumers to a parking page displaying commercial links to other websites in the same field of activity as that of Complainant shows that Respondent does not use the domain name in connection to any bona fide offering of goods or services, see Intesa Sanpaolo S.p.A. v. Abayomi Ajileye, Case No. 102396 (CAC March 19, 2019) “the disputed domain name resolves to a parking page containing PPC links to third parties’ sites which relate to products or services competing with the Complainant’s products or services. Such uses of the domain name are clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s mark.”.

Respondent did not reply to the complaint to defend its registration of the disputed domain name. Under these circumstances, many Panels have found that those facts were generally evidence that Respondent lacks rights or legitimate interests in the disputed domain name, see Vivendi v. (gongning), WIPO Case No. D2020-0740, “The absence of substantive response and evidence by the Respondent to the Complainant’s contentions and the fact that the Respondent was granted neither a license nor an authorization to make any use of the Complainant’s trademark, lead the Panel to find the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain names.”.

Therefore, the Panel finds that Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name and has therefore satisfied paragraph 4(a) of the Policy.

BAD FAITH

Complainant argues that the disputed domain name <merialoffers.com> is confusingly similar to its prior trademarks MERIAL and that Respondent could not ignore Complainant’s prior rights because, notably, the term “MERIAL” is highly connected to the Complainant, as a Google search would have shown to the Respondent. Complainant affirms that this behaviour constitutes bad faith from the Respondent’s part.

The Panel agrees that almost all results for the sign “MERIAL”, in a Google search, relate to Complainant and its activities. Therefore, it is unlikely that Respondent did not have such trademark in mind when registering the disputed domain name.

Moreover, as pointed out by Complainant, Respondent has a history of registering domain names targeting Complainant’s Group. For instance, Complainant obtained the transfer of the domain name <boehringeringlheimpetrebates.com> from Respondent, see CAC case No. 102871.

Also, Respondent did not try to rebut Complainant’s contentions which is also an indicator of bad faith.

Hence, the Panel deems that the disputed domain name was registered in bad faith.

As regards use of the disputed domain name, Complainant alleges that the disputed domain name resolves to a parking page containing commercial links related to the Complainant’s activities, and that this is an attempt to attract Internet users for commercial gain to the Respondent’s website. Previous Panels have found such behaviour as constituting use in bad

faith of a domain name, see AMUNDI ASSET MANAGEMENT v. NULL NULL, Case No. 102393 (CAC March 14, 2019) “Furthermore, the domain name resolves to a parking (or pay-per-click) webpage with the commercial links to third parties or services. The incorporation of a trademark into a domain name, coupled with an inactive website or with a parking page, in order to profit from click-through fees or other revenue sources constitutes bad faith registration and use.”.

Keeping in mind the pattern of conduct shown by Respondent, that already targeted Complainant and its trademarks in other cases, bad faith can be incurred.

The Panel therefore considers that the disputed domain name is also 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

Complainant holds trademark rights for the Merial sign. The disputed domain name is reproducing Complainant’s trademarks. Respondent failed to establish rights or legitimate interests in the disputed domain name. Complainant has established that Respondent registered and uses the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. MerialOffers.COM: Transferred

PANELLISTS

Name	Nathalie Dreyfus
------	------------------

DATE OF PANEL DECISION 2021-07-30

Publish the Decision
