

Decision for dispute CAC-UDRP-104075

Case number CAC-UDRP-104075

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Domain names jardiance.live

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Boehringer Ingelheim International GmbH

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Pearl Quest Computer Systems and Software Design LLC

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 invokes the following registered trademark in this case:

- JARDIANCE, international trademark No. 981336 registered since September 3, 2008 in class 5, and covering various countries.

FACTUAL BACKGROUND

The Complainant is part of a family-owned pharmaceutical group of companies with roots going back to 1885. The Complainant's group has become a global research-driven pharmaceutical enterprise with about 52,000 employees. The main business areas of the Complainant are human pharmaceuticals, animal health and biopharmaceuticals. In 2020, net sales of the Complainant's group of companies amounted to approximately EUR 19,6 billion.

The Complainant developed a prescription medicine used along with diet and exercise to lower blood sugar in adults with type 2 diabetes, and also to reduce the risk of cardiovascular death in adults with type 2 diabetes who have known cardiovascular disease. This medicine is sold under the registered word mark JARDIANCE which covers numerous countries

all over the world. The Complainant also owns domain names comprising the same term, such as <jardiance.com> registered on April 29, 2008.

The disputed domain name <jardiance.live> was registered on October 6, 2021 and resolves to a parking page including sponsored links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be identical to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent is not related in any way to the Complainant and has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew of the existence of the Complainant's trademark. The Complainant further contends that the Respondent has attempted to attract Internet users to his own website thanks to the Complainant's trademark for its own commercial gain.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered JARDIANCE trademark, which is used in connection with its pharmaceutical business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <jardiance.live> incorporates the Complainant's JARDIANCE trademark in its entirety.

It is well established that the Top Level Domains ("TLDs") such as ".live" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Badal Dixit" from the organisation "Pearl Quest Computer Systems and Software Design LLC". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see sections 2.5 and 2.5.1 of the WIPO Overview 3.0). The disputed domain name incorporates the Complainant's JARDIANCE trademark in its entirety without any addition. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, it appears that the disputed domain name refers to a parking page containing sponsored links, one of which appears to refer to the medical sector which can be linked to the Complainant's business. In the circumstances of this case, the Panel finds that this does not amount to legitimate noncommercial or fair use of the disputed domain name.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the fact that a respondent is aware of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the JARDIANCE trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive JARDIANCE mark in its entirety without any addition.

The Respondent has been using the disputed domain name in relation to a standard parking page displaying sponsored PPC links. While the intention to earn click through-revenue is not in itself illegitimate, the Panel finds that the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The Panel finds that by using the disputed domain name identical to the Complainant's trademark in connection with a website containing sponsored link, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. This is especially true as at least one of the sponsored links refers to the medical sector which can be linked to the Complainant's activities.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. JARDIANCE.LIVE: Transferred

PANELLISTS

| | |
|------|----------------|
| Name | Flip Petillion |
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DATE OF PANEL DECISION 2021-11-16

