

Decision for dispute CAC-UDRP-104177

Case number	CAC-UDRP-104177
Time of filing	2021-11-22 09:14:29
Domain names	nexgardpetsmart.com

Case administrator

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

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	farid karradi
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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 EU trademark NEXGARD (Reg. No. 011855061) for the goods in class 5 (veterinary articles; veterinary preparations), registered since October 9, 2013. The Complainant also owns other registrations of NEXGARD mark, including international trademark NEXGARD (Reg. No. 1166496), registered since May 29, 2013.

FACTUAL BACKGROUND

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

BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE ("Complainant") is the owner of several registrations for the trademark "NEXGARD" on a worldwide basis. The BOEHRINGER INGELHEIM ANIMAL HEALTH Business Unit is a well-known producer of veterinary articles for pets. NEXGARD is a drug delivered in a beef-flavoured chew that kills adult fleas and is indicated for the treatment and prevention of flea infestations and the treatment and control of tick infestations in dogs and puppies for one month.

The disputed domain name <nexgardpetsmart.com> was registered on November 15, 2021, and is not used. The

Complainant concludes that Respondent registered the domain name with the intention to attract, for commercial gain, Internet users to his website through likelihood of confusion which may arise with the trademark as to the source, sponsorship, affiliation, or endorsement of his website or other online location or of a service on his website or location, which constitutes registration and use in bad faith.

The Complainant alleged that the disputed domain name is confusingly similar to its trademark NEXGARD. The disputed domain name wholly incorporates a Complainant's registered trademark and addition of the terms "PET SMART" (related to the Complainant's product NEXGARD) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark NEXGARD. Moreover, the Complainant's rights over the term "NEXGARD" have already been confirmed by previous panels in WIPO Case No. D2021-0635, Boehringer Ingelheim Animal Health France v. hwang gyu sun <nexgard.net> and CAC Case No. 103532, BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE v. Mr NYOB <nexgardchewables.com>.

The Complainant asserted that the Respondent is not identified in the Whois database as the disputed domain name. Respondent is not sponsored by or affiliated with Complainant in any way. Complainant has not permitted Respondent to use Complainant's trademark: neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent. The disputed domain name resolves to 404 page. This non-use does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use, therefore, the Respondent has no right or legitimate interest in respect of the disputed domain name.

The Complainant's trademark NEXGARD is well known and the Complainant stated that it is, therefore, reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark NEXGARD. The Complainant concludes that Respondent registered the domain name with the intention to attract, for commercial gain, Internet users to his website through likelihood of confusion which may arise with the trademark as to the source, sponsorship, affiliation, or endorsement of his website or other online location or of a service on his website or location, which constitutes registration and use in bad faith.

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).

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

1. The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademark NEXGARD. The adding of words "pet" and "smart" in the end of the word mark NEXGARD is related to the Complainant's veterinary products and, being combined with the Complainant's well-known trademark NEXGARD (as has already been established in WIPO Case No. D2021-0635, Boehringer Ingelheim Animal Health France v. Hwang Gyu Sun <nexgard.net>), does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

2. The Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Also, Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademarks in any manner, including in domain names. The Respondent's name "farid karradi" is certainly not resembling the disputed domain name in any manner. Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use.

3. As no administratively compliant response has been provided to the Panel and the prima facie evidence was not challenged by the Respondent, the Panel concludes that the Respondent has not put forward any reason for having registered the disputed domain name that would not trade off the Complainant's trademark. Indeed, adding words "pet" and "smart" in the end of the disputed name clearly shows that the Respondent had knowledge of the Complainant's trademark and well-known veterinary product for pets when he/she registered the disputed domain name. Therefore, it is clear that the Respondent registered the disputed domain name in bad faith with the knowledge of the Complainant's trademark and business.

4. Additionally, the evidence in this case (see November 25, 2021 website <<https://www.nexgardpetsmart.com>> print screen presented by the case administrator in the Non Standard Communication of December 16, 2021) show that the Respondent is, in fact, already using the disputed domain name to confuse unsuspecting internet users looking for Complainant's product NEXGARD, and this is misleading internet users as to the source of the domain name and website. Accordingly, the Panel finds that the disputed domain name is both 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. NEXGARDPETSMA.COM: Transferred

PANELLISTS

Name	dr. Darius Sauliūnas
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DATE OF PANEL DECISION 2022-01-03

Publish the Decision
