Decision for dispute CAC-UDRP-100446

Case number	**CAC-UDRP-100446**
Time of filing	**2012-05-10 13:49:16**
Domain names	**orderlexapro.net**

Case administrator

Name	**Tereza Bartošková (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Organization	**Whois Privacy Services Pty Ltd**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of International Registration No. 778106 for the word mark LEXAPRO.

FACTUAL BACKGROUND

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

The Complainant, H. Lundbeck A/S is an international pharmaceutical company engaged in the research, development, production, marketing and sale of pharmaceuticals across the world. The company's products are targeted at disorders such as depression and anxiety, psychotic disorders, epilepsy and Huntington's, Alzheimer's and Parkinson's diseases.

In 2011, the company's revenue was DKK 16.0 billion (approximately EUR 2.2 billion or USD 3.0 billion) as evidenced by extracts from the Annual Report 2011 attached as Annex 1 to the Complaint.

The Complainant is the owner of the trademark LEXAPRO which is registered in numerous countries around the world.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

Procedural factors

After the filing of the Complaint against the Respondent, Whois Privacy Services Pty Ltd having an address in Australia, the name of the Respondent was changed to Absord, having an address in Florida.

As stated in Decision No 100221, "in the absence of any written guidance in the UDRP, it would be against the spirit and essence of the system to oblige the Complainant to file a new Complaint or a[n] amended Complaint each time the name of the Respondent is changed during the procedure because of the use of a proxy/privacy service provider."

It is not necessary for the Complainant to file an amended Complaint against the new registrant of the domain name and as a procedural issue the change of name of the Respondent after filing of the Complaint will be disregarded.

Paragraph 15 of the Rules states that the Panel shall decide a 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.

If a Party does not comply with the provision of, or a requirement under the Rules, in the absence of exceptional circumstances, the Panel shall draw such inferences therefore as it considers appropriate (Paragraph 14 of the Rules).

The Respondent has failed to submit a response and consequently has not contested any of the submissions made by the Complainant. The Panel will therefore make its decision on the basis of the factual statements submitted and the documents made available by the Complainant to support its contentions.

Reasons for the decision

Paragraph 4 a. of the Policy requires the Complainant to prove each of the following three elements:

(i) the domain name is identical or confusingly similar to a trade mark or a service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the domain name; and
(iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant is the owner of International Registration No 778106 for the word LEXAPRO.

The domain name "orderlexapro.net" is comprised of the Complainant's mark LEXAPRO and the generic word "order" and the suffix ".net". As found in the case of Sony Kabashiki Kaisha v Inja, Kil (WIPO D2000-149) "[n]either the addition of the ordinary descriptive word...nor the suffix ".com" detract from the overall impression of the dominant part of the name in each case, namely the trade mark SONY".

The distinctive word in the disputed domain name is the Complainant's mark LEXAPRO. Adding the generic word "order" and the suffix "net" to it constitutes a domain name which is confusingly similar to the Complaint's mark, LEXAPRO.

The Panel finds that the disputed domain name "orderlexapro.net" is confusingly similar to the LEXAPRO trade mark in which the Complainant has rights.

B. Rights or legitimate interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the domain name (Para 4 a.(ii) of the Policy).

In the absence of a Response, none of the grounds set out in Paragraph 4 c. of the Policy, by which a Respondent may demonstrate rights or legitimate interests in the domain name have been asserted.

The Complainant has long standing rights in the mark LEXAPRO. The Panel finds that the Complainant has established that it has not licenced or authorised the Respondent to use or incorporate its mark LEXAPRO in the disputed domain name.

The Complainant contends that Lexapro® is a controlled substance and may not be sold online without a prescription from an authorized person. The Panel notes that the activity conducted at the site using the disputed domain name may well be illegal as to the controlled substance Lexapro®.

The use of the Complainant's trademark LEXAPRO combined with the word "order" in the disputed domain name, will give the impression that a visitor to the site can order the Complainant's product Lexapro®, and that the site is linked to the Complainant. There appears to be no reason why the Respondent would use the Complainant's trade mark in the disputed domain name unless seeking to create the impression of an association with the Complainant.

There is nothing to suggest that the Respondent has any legitimate interest in the domain name. The Respondent does not appear to be using the domain name in connection with a bona fide offering of goods and services, or making a legitimate non-commercial or fair use or the domain name, without intent for commercial gain.

The Panel accepts the Complainant's submissions and finds, in the absence of any evidence to the contrary, that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and used in bad faith

The third element that the Complainant must prove is that the disputed domain name has been registered and is being used in bad faith (Policy, paragraph 4 a.(iii)).

The use of the Complainant´s trademark LEXAPRO as part of the disputed domain name, combined with the specific content of the web site, indicates that the Respondent knew of the existence of the Complainant’s trade mark LEXAPRO at the time that it registered the domain name.

As evidenced by the screenshot of the web page annexed to the Complaint, it appears that the domain name is being used to divert internet traffic to a site that claims to offer online sale of Complainant's product LEXAPRO. In doing so, it appears that the domain name is being used to intentionally attempt to attract for commercial gain, visitors to the website using the disputed domain name, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of that website.

On the basis of the uncontested evidence submitted by the Complainant, the Panel finds that the domain name has been 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. **ORDERLEXAPRO.NET**: Transferred

PANELLISTS

Name	**Mrs Veronica Marion Bailey**

DATE OF PANEL DECISION 2012-06-20

Publish the Decision