Decision for dispute CAC-UDRP-101036

Case number	**CAC-UDRP-101036**
Time of filing	**2015-08-14 13:04:13**
Domain names	**dulcolax.xyz**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**BOEHRINGER INGELHEIM Pharma GmbH & Co. KG**

Complainant representative

Organization	**Nameshield (Anne Morin)**

Respondent

Organization	**SKYRXSHOP**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or have been decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks, among which:

- the international word mark DULCOLAX n° 165781, registered on 10 December 1952 for goods of classes 1 and 5;
- the international figurative mark DULCOLAX n° 937960, registered on 16 August 2007 for goods of class 5;

FACTUAL BACKGROUND

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

Boehringer Ingelheim Pharma GmbH & Co. KG 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 140 affiliated companies world-wide, with roughly 46,000 employees. The two main business areas of Boehringer are:

Human Pharmaceuticals and Animal Health. In 2013 alone, net sales of the Boehringer group of companies amounted to about EUR 14.1 billion.

DULCOLAX is a stimulant laxative drug that produces a bowel movement. The generic term for the drug sold under the trademark DULCOLAX is “BISACODYL”.

The Complainant is also the owner of an important portfolio of domain names including the trademark DULCOLAX, of which the domain name <dulcolax.com> registered on 2 December 1997.

The disputed domain name <dulcolax.xyz> was registered on 3 August 2015 by the Respondent.

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

1. The Domain name is identical to the DULCOLAX trademarks of the Complainant.

The disputed domain name <dulcolax.xyz> is identical to the DULCOLAX trademarks of the Complainant. Indeed, the domain name includes in its entirety the trademark without any adjunction of letter or word.

The new gTLD extension “.XYZ” is not sufficient to escape the finding that the domain name is identical to the DULCOLAX trademarks of the Complainant.

The Panel finds that the Complainant established that the disputed domain name <dulcolax.xyz> is identical to his prior DULCOLAX trademarks.

2. The Respondent does not have any rights or legitimate interest in the domain name(s)

According to WIPO D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., 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 domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The information regarding the Respondent, provided by the Whois of the disputed domain name <dulcolax.xyz>, is "SKYRXSHOP". A Respondent is not commonly known by a disputed domain name if the Whois information is not similar to the disputed domain name. Thus, the Respondent is not known as "DULCOLAX".

The Complainant sufficiently establishes that the Respondent has no rights or legitimate interests in respect of the domain name <dulcolax.xyz> and is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither a licence nor an authorization has been granted to the Respondent to make any use of the Complainant's trademarks DULCOLAX, or apply for registration of the disputed domain name by the Complainant.

On the contrary, the Respondent "SKYRXSHOP" describes itself as "Your reliable supplier of generic medications." on its website http://www.skyrxshop.com/ into which redirects the disputed domain name <dulcolax.xyz>.

Thus, the Respondent knows the pharmaceutical sector very well and could therefore not ignore the Complainant's trademark DULCOLAX.

The Respondent was necessarily informed of this trademark when it registered the disputed domain name <dulcolax.xyz>.

The disputed domain name redirects to a page from the website http://www.skyrxshop.com/ On this page, the Respondent sells drugs under the title "Generic Dulcolax (Bisacodyl)". According to the description, the Respondent sells a generic drug (Bisacodyl) from the drug "Dulcolax".

The Respondent's website also offers for sale many other pharmaceutical products, and so is attracting Internet users through the reputation of the Complainant's trademark, who are then offered a wide range of unrelated products.

The Complainant has, to the satisfaction of the Panel, shown that the Respondent was seeking to use the domain name only to divert the consumers to his website and that the Respondent has no legitimate interests in respect of the disputed domain name <dulcolax.xyz>.

3. The domain name(s) has been registered and is being used in bad faith

The Complainant successfully asserts that the Respondent was necessarily aware of the trademark DULCOLAX® when it registered the disputed domain name <dulcolax.xyz>.

This is confirmed by the content of the website into which the disputed domain name redirects. Indeed, the website in relation with the disputed domain name <dulcolax.xyz> sells drugs under the title "Generic Dulcolax".

The Respondent is in the business of the sale of pharmaceuticals, and no doubt knew of the Complainant's trademarks at the time of registration of the disputed domain name, and deliberately sought to use their goodwill to attract Internet users seeking the Complainant's product.

The Respondent has registered and used the disputed domain names in order to deceive Internet users seeking the Complainant's product, so as to generate revenue from selling unrelated or competing pharmaceuticals. This constitutes bad faith registration and use within the meaning of the Policy.

There is also evidence of bad faith use, in that the Respondent is using the disputed domain name to direct Internet traffic to a for-profit on-line pharmacy that sells pharmaceuticals that directly compete with Complainant.

Accordingly, the Complainant has shown, to the satisfaction of the Panel, that the 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. **DULCOLAX.XYZ**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2015-09-24

Publish the Decision