Decision for dispute CAC-UDRP-101138

Case number	**CAC-UDRP-101138**
Time of filing	**2015-12-22 11:34:10**
Domain names	**entellix.com, lumellix.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Organization	**Mcbao Media Inc**

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 names.

IDENTIFICATION OF RIGHTS

Complainant is the owner of the trademarks "ENTELLIX" and "LUMELLIX". Both registrations are valid for class 5; the trademarks are registered in Denmark and other jurisdictions.

FACTUAL BACKGROUND

I. Language of the proceedings

The Complainant requests that English be the language of the administrative proceedings, cf. Rules Paragraph 11(a). However, the Registration Agreement is Chinese. The Registrant´s name is - in addition to fact that the Respondent registered a domain name that is identical to the Complainant´s trademarks - written in Latin script and under the .com top level domain.

II. Complainant

The Complainant 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.

The Complainant was founded in 1915 by Hans Lundbeck in Copenhagen, Denmark. Today the Complainant employs approximately 5.600 people worldwide. The Complainant is one of the world's leading pharmaceutical companies working with brain disorders. In 2014, the company's revenue was USD 3.4 billion.

The Complainant markets a number of different pharmaceuticals for the treatment of brain diseases.

The trademarks ENTELLIX® and LUMELLIX® are registered in Denmark, where the Complainant is established and are applied for/registered in other jurisdictions around the world. The Danish applications took place on 30 September 2015 and they were published by the Danish Trademark Office (DKPTO) on 2 October 2015.

III. Disputed domain names

The Respondent registered the disputed domain names on 6 October 2015.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Complainant's Contentions:

The contested domain names entellix.com and lumellix.com are identical to the trademarks ENTELLIX and LUMELLIX. Also, the Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the .com top level domain designation is irrelevant in the comparison of a domain name to a trademark.

The Respondent has not been granted any license or consent, express or implied, to use the complainant´s trademarks, in a domain name or in any other manner, nor has the Complainant acquiesced in any way to such use or application by the Respondent. At no time did the Respondent have authorization from the Complainant to register the disputed domain names. Further, to the best knowledge of the Complainant, the Respondent has no legitimate right in the contested domain names. The Respondent did not use the domain names as a trademark, company name, business or trade name prior to the registration of the disputed domain names, nor is the Respondent otherwise commonly known in reference to the name.

The Complainant applied to register its trademarks ENTELLIX and LUMELLIX in Denmark on 30 September 2015. Trademark applications filed at the DKPTO are made public immediately after filing, which in practice means two days after the filing of the trademark. Thus, the two applications were made public on 02 October 2015 and the contested domain names were both registered on 06 October 2015, which is immediately after the filing and publication of the application of the two trademarks. Both trademarks were registered on 10 November 2015 and are thus registered before the filing of this complaint.

It is a well-known fact that a number of companies monitor new trademark applications worldwide some of which report their findings their customers or to the public at large as soon as they are made public. The Complainant claims that because of the coined and thus distinctive nature of the Complainant´s trademarks ENTELLIX® and LUMELLIX®, the Respondent must have had positive knowledge as to the existence of the Complainant’s trademarks at the time the Respondent registered the contested domain names. This is the more apparent since the Respondent has registered both trademarks as domain names, which makes it inconceivable that the Respondent did not know of the Complainant´s two trademarks, when registering the two domain names.

The Respondent does not use the domain names actively. Now, instead, a message indicating that the webpage is unavailable will appear when the disputed domain names are entered into a search engine. However, as first stated in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000 0003, and repeated in many subsequent decisions under the UDRP: “the concept of a domain name ‘being used in bad faith’ is not limited to positive action; inaction

is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by Respondent to amount to the domain name being used in bad faith."

The Complainant claims that the Respondent's lack of bona fide use of this disputed domain names is likely to disrupt the business of the Complainant since it prevents the Complainant from reflecting its distinctive trademarks in the corresponding .com domain names. Further, given the coined nature of the trademarks it is inconceivable that the Respondent will be able to use the disputed domain names for any purpose that would not be infringing the Complainant´s rights.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to trademarks 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 Names (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 Names have been registered and are 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

I. Language of proceedings

According to paragraph 11 (a) UDRP Rules the language of proceedings is the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The language of the Registration Agreement is, according the Registrar Verification, Chinese. The complaint has been filed in English, however. The Complainant asserts that the Respondent is familiar with the English language. The Complainant argues that the Respondent's name is "McBao Media Inc." in Latin characters that the domain names in dispute are registered in Latin script and are governed by the .com top level domain name.

The Respondent filed two emails as response in Chinese, however including Latin letters and information on the Complainant in English in the first mail. As the Respondent obviously refers to the content of the English text in its emails, the Panel concludes that the Respondent is capable of responding to the Complaint in English.

Thus, the Panel holds that the language of the proceedings shall be English.

According to § 11 (b) UDRP Rules the Panel ordered that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding. Therefore, on 10 February 2016 the Panel ordered the Respondent to provide a translation of its response within 5 working days.

However, no response in English has been filed by the Respondent, timely.

According to § 8 of the UDRP Supplemental Rules, the Panel may disregard documents submitted in other languages than

the language of proceeding even without requesting the translation. Thus, the Panel notified the Respondent on 10 February 2016 that it shall disregard its response in case it is not properly translated into English, timely.

II. The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

The Panel agrees with the Complainant that the disputed domain names are identical to the Complainant's trademarks. Both distinctive terms are identical. As the Complainant said, the toplevel domain .com is to be neglected in this assessment.

III. The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

The Respondent has not filed an administratively compliant response. The Panel decided that the language of proceedings is English. As the Respondent has been prompted to provide a translation of its response and as the Respondent has not complied with this request, according to § 8 of the UDRP Supplemental Rules the Panel disregards any documents provided in Chinese or other languages. Thus, the Panel may draw such inferences therefrom as it considers appropriate (§ 14 (b) of the UDRP Rules). The Panel may accept the contentions of the Complainant as admitted by the Respondent.

No arguments why the Respondent could have own rights or legitimate interests in the disputed domain names, is at hand. The Panel accepts the conventions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain names.

IV. The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The timing of the registration of the disputed domain names indicates Respondent's bad faith in registering such domain names. It should be emphasized that the Respondent pretends not to be capable of providing its response in English; however, on the other hand the Respondent is obviously capable of applying for the disputed domain names within days after the trademarks of the Complainant identical to such domain names were published. The Panel has no reason to disbelieve the Complainant when it argues that this coincidence has its roots in the fact that the Respondent seems to monitor new trademark applications worldwide. Further, the Panel is convinced that it cannot be a coincidence that the Respondent filed for two domain names consisting of two trademarks of Complainant, newly applied for, within days. Complainant's trademarks are not at all of descriptive nature, nor do they contain descriptive or generic terms.

Other than in Case 100286 "DYL.com" the disputed domain names have not been registered years before the trademarks came into existence. There is no indication that the Respondent has chosen the names freely and without reference to Complainant's trademarks.

As the Complainant further stated, the concept of the domain names "being used in bad faith" is not limited to positive action, but rather incorporates inaction. At least in this case, the Panel agrees. According to § 4 (b) (i) – (iii) UDRP the circumstances of registering a domain name to, inter alia, sell it, to prevent the owner of a trademark from reflecting the mark in the corresponding domain name, provided, that one has engaged in a pattern of such conduct, or the registration for the primary purpose of disrupting the business of a competitor indicate registration and use in bad faith. Particularly, the pattern of conduct the Respondent entered into further indicates the use of the disputed domain names in bad faith. Very often, the domain name registration follows the trademark registration by trademark owners. Registering domain names identical to trademark applications even before they have matured to registrations, prevents trademark owners from reflecting their trademarks in a corresponding domain name and disrupts their business with respect to the products, the trademarks protect. Thus, the Panel holds that the Respondent has registered and has used the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ENTELLIX.COM**: Transferred
2. **LUMELLIX.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2016-02-23

Publish the Decision