Decision for dispute CAC-UDRP-101190

Case number	**CAC-UDRP-101190**
Time of filing	**2016-03-02 12:24:56**
Domain names	**lexapro.site**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**H. Lundbeck A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**Konayem Temirtassova**

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant has shown that it is the owner of the LEXAPRO international trademark registration no. 778106 designating around 70 countries.

FACTUAL BACKGROUND

The Complainant H. Lundbeck A/S was founded in 1915 and now it’s 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.

Lundbeck is one of the world's leading pharmaceutical companies working with brain disorders. In 2014, the company's revenue was USD 3.4 billion. Today Lundbeck employs approximately 5,600 people worldwide.

Lundbeck markets a number of different pharmaceuticals for the treatment of brain disorders. The most recently launched compounds include: Cipralex/Lexapro® (depression), Ebixa® (Alzheimer’s disease), Azilect® (Parkinson’s disease),

Xenazine® (chorea associated with Huntington's disease), Sabril® (epilepsy), Sycrest® (bipolar disorder) and Onfi® (Lennox-Gastaut syndrome).

The trademark LEXAPRO is registered in more than 100 countries around the world.

The domain name was registered on January 23, 2016.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

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

1.About the confusing similarity between the trademarks and the contested domain name (Policy, Paragraph 4(a)(i); Rules, Paragraph 3(b)(ix)(2).

The Complainant submits that the disputed domain name lexapro.site is identical to the trade mark LEXAPRO, in which the Complainant holds rights. The Complainant thus asserts that it is an established and recognized principle under the UDRP that the presence of the .site top level domain designation is irrelevant in the comparison of a domain name to a trademark.

2. The Respondent has no rights or legitimate interests in respect of the domain name (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2)).

The Complainant asserts that the Respondent has not received any license or consent, express or implied, to use the complainant´s trademark LEXAPRO, in a domain name or in any other manner from the Complainant, 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 name.

Further, to the best of the Complainant's knowledge, the Respondent has no rights in the contested domain name. The Respondent did not use the domain name as a trademark, company name, business or trade name prior to the registration of the disputed domain name, nor is the Respondent otherwise commonly known in reference to the name.

Also, to the best of the Complainant's knowledge, the Respondent has no legitimate interest in the contested domain name.

Finally, since the domain name does not appear to be in use, it is evident that the Respondent is not engaged in a legitimate non-commercial or fair use of the domain name.

3. The domain names were registered and are being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant´s trademark LEXAPRO is registered in the recorded country of residence of the Respondent, Kazakhstan, through the Madrid Protocol.

The Complainant claims that because of the distinctive nature and intensive use of the Complainant´s trademark LEXAPRO, the Respondent had positive knowledge as to the existence of the Complainant’s trademark at the time the Respondent registered the domain name.

The disputed domain name is not actively used. However, as first stated in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case 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 due to the distinctive nature and intensive use of the Complainant's LEXAPRO trademark, it is obviously inconceivable that the Respondent will be able to use the disputed domain name for any plausible purpose that would not be infringing on the Complainant’s rights.

RESPONDENT:

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

The Panel agrees with the Complainant's assertion that the domain name at issue lexapro.site is identical to the Complainant’s trademark “LEXAPRO”.

In fact the domain name at issue corresponds to the Complainant’s LEXAPRO mark, apart from the “.site” generic top level domain.

The Complainant claims (and this Panel agrees), that the incorporation of its trademark in its entirety into the disputed domain name is sufficient to establish that the disputed domain name is identical to the registered trademark.

The addition of the ".site” generic top level domain, being a technical requirement, is irrelevant for the confusion/similarity comparison.

Therefore this Panel considers the disputed domain name to be identical to the Complainant's marks pursuant to paragraph 4(a)(i) of the Policy.

* * *

The Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorised the Respondent to use or apply for any domain name incorporating Complainant’s trademark.

The Respondent does not appear to make any legitimate use of the disputed domain name for non-commercial activities. Indeed, the disputed domain name does not appear to be used.

The Respondent does not appear to have been commonly known by the disputed domain name.

The Respondent has not proved, affirmed or even claimed to have legitimate rights or interests in the disputed domain name

(within the meaning of paragraph 4(a)(ii)of the Policy).

Therefore, the Respondent has not shown any facts or elements to justify prior rights and/or legitimate interests in the disputed domain name in accordance with the UDRP Policy. The Respondent did not provide any elements to demonstrate, as required by the Policy, that it used or made preparations to use the disputed domain name or a name corresponding to it in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

* * *

Based on the evidence put forward by the Complainant, the Panel, on the balance of probabilities, finds that the Respondent was aware of the Complainant's trademark registrations and rights to the LEXAPRO Mark when she registered the disputed domain name.

In fact, the Complainant's trademark is a fanciful name with no meaning. It has been registered and used for several years and thus it long predates the disputed domain name's registration. Therefore, in the absence of evidence to the contrary, the Panel finds that the Respondent knew of the Complainant's trademark and intentionally intended to create an association with the Complainant and its business, and that the Respondent must have had actual knowledge of the Complainant's trademark at the time of the registration of the disputed domain name, with respect to the use of the disputed domain name.

The disputed domain name is not actively used. However, as noted by the Complainant, it was first stated in Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case D2000-0003) and repeated in many subsequent decisions under the UDRP: "that 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."

Inference of bad faith registration and use of the disputed domain name is also given by the fact that the Respondent has not even responded to, let alone denied, the assertions of bad faith made by the Complainant in this proceeding. It is therefore reasonable to assume that if the Respondent had legitimate purposes for registering and using the disputed domain name, she would have responded.

Therefore this Panel considers that, owing to all of the above, the Respondent's registration and use of the lexapro.site domain name falls within the parameters of bad faith use and registration within the meaning of the ICANN Policy.

Considering the foregoing, the Complainant has, to the satisfaction of the Panel, shown that the Domain Name was registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LEXAPRO.SITE**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2016-04-04

Publish the Decision