Decision for dispute CAC-UDRP-101238

Case number	CAC-UDRP-101238
Time of filing	2016-06-30 18:01:53
Domain names	AGGRENOX.XYZ

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Whois Privacy Corp.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of multiple trademarks including the European Union trademark AGGRENOX, filing number 000731984, registration date 4 March 1999.

FACTUAL BACKGROUND

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

According to the information provided Complainant is a global pharmaceutical group of companies with its roots going back to 1885.

The disputed domain name <aggrenox.xyz> redirects to a Russian website offering download via torrent. The disputed domain name was registered on 2 June 2016.

The trademark registration of Complainant has been issued prior to the registration of the disputed domain name. According to Complainant the disputed domain name is identical to Complainant's trademark.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name as the website to which the disputed domain name resolves only redirects to a Russian website without any link to the term AGGRENOX. Respondent is not related in any way with the business of Complainant.

According to Complainant the disputed domain name is registered in bad faith. Given the distinctiveness of Complainant's trademark, it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of Complainant's trademark especially as the trademark AGGRENOX is registered with the Trademark Clearing House ("TMCH") since 16 April 2014.

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

In the opinion of the Panel the disputed domain name is identical to Complainant's trademarks (Policy, Par. 4 (a)(1)). Many UDRP decisions have found that a disputed domain name is identical to a complainant's trademark where the disputed domain name incorporates the complainant's trademark or the principal part thereof in its entirety. The European Union trademark of Complainant predates by many years the registration date of the disputed domain name. The top-level domain ".xyz" may be disregarded.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademarks or to register the disputed domain name incorporating its marks. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent.
Respondent did not submit any response. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name (Policy, Par. 4 (a)(11)).

The Panel finds that the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(b)(iv)). The trademarks of Complainant have been in existence for a long time. Respondent knew or should have known that the disputed domain name included Complainant's trademarks also in view of the fact that the trademarks have been registered with the TMCH. In addition, the Panel notes that the website to which the disputed domain resolves redirects to a Russian

website offering software downloads via torrent. The Panel finally notes that Respondent's use of the website at the disputed domain name which incorporates Complainant's trademarks in its entirety indicates that Respondent possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AGGRENOX.XYZ**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2016-08-04

Publish the Decision