Decision for dispute CAC-UDRP-101452

Case number	CAC-UDRP-101452
Time of filing	2017-02-23 08:51:50
Domain names	METACAM.XYZ

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Boehringer Ingelheim Vetmedica GmbH

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Whois Privacy Corp.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trademark registrations consisting of the term “METACAM”, in particular international trademark no. 547717 registered on August 1, 1990 for goods in class 5. Moreover, it is the owner of various domain names including the wording “METACAM”, in particular <metacam.com> created on June 25, 2003.

FACTUAL BACKGROUND

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

1. The Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer in Ingelheim am Rhein. It is a worldwide well known pharmaceutical enterprise and has about 140 affiliated companies worldwide with roughly 46,000 employees. The Complainant’s two main business areas are Human Pharmaceuticals and Animal Health.

The Complainant contends that its trademark ”METACAM” is used to indicate a non-steroid anti-inflammatory drug (meloxicam), which is often used to treat arthritis in Pets.

According to Complainant's non-contested allegations, the trademark "METACAM" was registered in the Trade Mark Clearing House (TMCH), for which the last renewal was made on April 16, 2014.

According to Complainant's further non-contested allegations, the term METACAM is only known in relation with the Complainant and its METACAM's product and has no dictionary meaning in any language.

2. The Disputed Domain Name <metacam.xyz> was created on June 2, 2016 and is currently not used in connection with an active website.

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.

The Panel has been informed that neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The Czech Arbitration Court is therefore unaware whether the written notice was received by the Respondent or not. As far as the e-mail notice is concerned, Czech Arbitration Court received a notice that the e-mails sent to <metacam.xyzowner@customers.whoisprivacycorp.com> and <postmaster@METACAM.XYZ> were returned back undelivered as the e-mail addresses had permanent fatal errors. No further e-mail address could be found on the disputed site. The Respondent never accessed the online platform.

On this regards, the Panel notes that the Registrant uses a privacy service and that in the Registrar Verification, the Registrar answered that the data were not available (N/A) to the Czech Arbitration Court's request to "Confirm or correct the Respondent's contact information listed above and if not complete, please provide Respondent's additional contact information as soon as possible, including, for the Respondent's technical contact, administrative and billing contacts for the above domain name(s)".

Nevertheless, there is wide recognition among panels that a complainant or provider who has correctly sent a UDRP case-communication to the WhoIs-listed registrant of record for a disputed domain name will in the absence of better information normally have discharged its communication responsibility under the UDRP Rules (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition at point 4.9). This Panel shares said view.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the Disputed Domain Name <metacam.xyz> is identical to the Complainant's trademark. Many Panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain

name incorporates the complainant’s trademark in its entirety. This is the case in the case at issue where the Complainant’s registered trademark “METACAM” is fully included in the Disputed Domain Name.

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name <metacam.xyz>.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant’s business. In addition, the Respondent is not commonly known by the Disputed Domain Name. Finally, no content is displayed on the website to which the Disputed Domain Name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3. Finally, the Panel notes that the Disputed Domain Name is currently held passively (i.e. resolves to a website that displays no content) and no response to the Complaint having been filed. In the Panel’s view, the Respondent has intentionally registered the Disputed Domain Name which totally reproduces the Complainant’s trademark “METACAM”. By the time the Disputed Domain Name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant’s rights on the trademarks, since the trademark “METACAM” was registered in the Trade Mark Clearing House (TMCH), for which the last renewal was made before the Disputed Domain Name was created.

In the Panel's view, these facts, including the Registrant's use of a privacy service in combination with provision of incomplete contact information to such service and concealment of its identity, bring to the conclusion that the Disputed 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. **METACAM.XYZ**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2017-03-30

Publish the Decision