

Decision for dispute CAC-UDRP-104342

Case number	CAC-UDRP-104342
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Time of filing	2022-02-10 09:28:11
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Domain names	mobic.services
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Urs Schwinger
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is a pharmaceutical group of companies engaged in three business areas of human pharmaceuticals, animal health and biopharmaceuticals and uses the MOBIC trademark to distinguish its nonsteroidal anti-inflammatory drug (NSAID).

The Complainant is the registered owner international trademark MOBIC® n° 563599 registered on November 28, 1990 designating 11 jurisdictions.

The Complainant also owns several domain names that include the word "MOBIC", such as <mobic.info> registered since July 31, 2001.

FACTUAL BACKGROUND

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

The disputed domain name <mobic.services> was registered on February 5, 2022 and resolves to a parking page with commercial links.

There is no information available about the Respondent, who did not file a response, except for that provided in the Complaint, on the Registrar's Whols and the information provided by the Registrar in response to a request by the Centre for the details of the registration of the disputed domain name.

The Respondent has availed of a privacy service to conceal his identity on the published Whols, and the Registrar confirmed that the Respondent is the current registrant of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that it is a pharmaceutical group of companies, with international sales of its products in three business areas namely human pharmaceuticals, animal health and biopharmaceutical. The Complainant's company profile annexed to the Complaint states that it is among of the top 20 companies in the pharmaceutical industry, with 52,000 employees achieving net sales of 19.6 billion euros in 2020.

The Complainant claims rights in the MOBIC trademark established by its portfolio of trademark registrations including international trademark MOBIC registration number 563599 registered on November 28, 1990, and its extensive use of the mark to distinguish its nonsteroidal anti-inflammatory drug (NSAID) that works by reducing hormones that cause inflammation and pain in the body. It is used to treat pain or inflammation caused by osteoarthritis or rheumatoid arthritis.

The Complainant has also provided evidence that the MOBIC mark was registered in the TradeMark ClearingHouse (TMCH) on April 16, 2014.

Additionally, the Complainant submits that it owns several domain names including the wording "MOBIC", such as <mobic.info> which it registered on July 31, 2001 as evidenced by a copy of the Whols information annexed to the Complaint.

The Complainant alleges that the disputed domain name <mobic.services> is identical to the trademark MOBIC in which it has rights because the disputed domain name is composed of the Complainant's trademark in its entirety without any adjunction of letter or word.

Furthermore, the Complainant adds that the new gTLD <.services> is not sufficient to escape the finding that the domain name <mobic.services> is identical to the trademark MOBIC and does not change the overall impression of the designation as being connected to the trademark of the Complainant. See F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. WIPO Case No. D2006-0451, ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.").

The Complainant next alleges that the Respondent has no right or legitimate interest in the disputed domain name asserting that the record shows that Respondent is not known as the disputed domain name, and past panels established under the Policy have held that a Respondent was not commonly known by a disputed domain name if, as in this case, the name of the registrant provided in the Whols information was not similar to the disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group Forum Case No. FA 1781783, <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

The Complainant adds that the Respondent is not related in any way with the Complainant and the Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant asserts that no licence or authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's MOBIC mark, or apply for registration of the disputed domain name.

Furthermore, the Complainant refers to a screen capture of the website to which the disputed domain name resolves which is merely a parking page with commercial links and argues that past panels established under the Policy have found that such use is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See Vance Int'l, Inc. v. Abend Forum Case No. FA 970871, (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees. See Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe WIPO Case No. D2007-1695, ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

The Complainant next alleges that the disputed domain name has been registered and is being used in bad faith, arguing that given the distinctiveness of the Complainant's trademarks and the extent of the reputation of the MOBIC mark, it is reasonable

to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. Furthermore, the Complainant argues that because the disputed domain name resolves to a parking page with commercial links, it follows that the Respondent has attempt to attract Internet users for commercial gain to his own websites taking advantage of the reputation of the Complainants' mark, which it is submitted, is evidence of bad faith. See *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* WIPO Case No. D2018-0497, ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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 Complainant has provided convincing evidence that rights in the MOBIC mark, established by its ownership of its portfolio of trademark registrations and extensive use of the mark on its anti-inflammatory pharmaceutical product.

The disputed domain name <mobic.services> consists of Complainant's mark in its entirety, in combination with the generic Top-Level Domain "(gTLD)" extension <.services>.

The gTLD extension <.services> may be ignored for the purposes of comparison because in the circumstances of this case it would be considered by Internet users as a necessary technical requirement for a domain name.

This Panel finds therefore that the disputed domain name is confusingly similar to the MOBIC mark in which Complainant has rights and Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

The Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the disputed domain name arguing that

- that the record shows that the Respondent is not known as the disputed domain name;
- the name provided by the Respondent as the registrant of the disputed domain name as shown in the disclosed Whois record is not similar to the disputed domain name;
- the Respondent is not related in any way to the Complainant;
- the Complainant does not carry out any activity for, nor has the Complainant any business with the Respondent;

- no licence or authorization has been granted by the Complainant which is the owner of the identical MOBIC trademark to the Respondent to make any use of the Complainant's MOBIC mark, or apply for registration of the disputed domain name;
- the screen capture which has been annexed to the Complaint shows that the disputed domain name merely resolves to a parking page with commercial links and argues that past panels established under the Policy have found that such use is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

The Complainant's trademark rights predate the registration of the disputed domain name and given the distinctiveness of the Complainant's trademarks and the extent of the reputation of the MOBIC mark, it is reasonable to infer that the disputed domain name was registered with full knowledge of the Complainant's trademark.

On the balance of probabilities therefore, this Panel finds that the disputed domain name was registered in bad faith with the intention of targeting and taking predatory advantage of Complainant's mark and goodwill in the MOBIC mark.

The uncontested evidence shows that Respondent is using the disputed domain name as the address of a website that has no content except for commercial links. This appears to be the registrar's holding page.

The screen capture which has been provided shows that the links relate to websites with a pharmaceutical connection. This may be due to the computer or other device which was used to access the webpage, rather than proving that these links are generated by all persons accessing the holding page. Other users may find different content. Nonetheless the Respondent as owner of the disputed domain name shares a responsibility for causing, permitting or allowing the disputed domain name to resolve to such content.

Such intentional use of the disputed domain name in an attempt to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site and the services purported to be offered by Respondent on his web site constitutes use of the disputed domain name in bad faith for the purposes of the Policy.

This finding is supported by the fact that Respondent availed of a privacy service to conceal his identity on the published Whois and has not responded to the Complaint.

As this Panel has found that the disputed domain names were registered and are being used in bad faith, Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOBIC.SERVICES:** Transferred

PANELLISTS

Name	Mr James Jude Bridgeman
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DATE OF PANEL DECISION 2022-03-18
