

Decision for dispute CAC-UDRP-104376

Case number CAC-UDRP-104376

Time of filing 2022-02-28 11:20:54

Domain names cyltezo.xyz

Case administrator

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

Complainant

Organization Boehringer Ingelheim International GmbH

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization LIUQINGRU

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 the registered owner of several trademark registrations for the term CYLTEZO, e.g. International registration no. 1242575 registered on January 19, 2015 for "Pharmaceutical preparations" in class 5 and designating several countries worldwide amongst others China and European Union.

FACTUAL BACKGROUND

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

It results from the Complainant's undisputed allegations that it is a German family-owned pharmaceutical group of companies founded by Albert Boehringer in 1885. Ever since, it has become a global research-driven pharmaceutical enterprise and one of the top 20 companies in the pharmaceutical industry, with roughly 52,000 employees. The Complainant's three main business areas are Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In addition, the Complainant's product CYLTEZO was approved by the U.S. Food and Drug Administration (FDA) in August 2017 for the treatment of multiple chronic inflammatory diseases including rheumatoid arthritis, psoriasis and Crohn's disease

Moreover, the Complainant owns the domain name <cyltezo.com> (registered on July 29, 2014).

The disputed domain name <cyltezo.xyz> was created on February 21, 2022 and resolved to an inactive webpage.

PARTIES CONTENTIONS

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

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

First of all, the gTLD “xyz” of the disputed domain name has to be disregarded under the first element confusing similarity test, since it is a standard registration requirement. The practice of disregarding the gTLD in determining identity or confusing similarity is applied irrespective of the particular gTLD (including with regard to “new gTLDs”) (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.11).

It results from the evidence provided that the Complainant is the registered owner of several trademark registrations for the term CYLTEZO, e.g. International registration no. 1242575 registered on January 19, 2015 for “Pharmaceutical preparations” in class 5 and designating several countries worldwide amongst others China and European Union.

Prior UDRP 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, see WIPO Overview 3.0 at section 1.7.

This Panel shares this view and notes that the Complainant’s registered trademark CYLTEZO is fully included in the disputed domain name, which does not contain any further terms. In the light of the above, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark CYLTEZO, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation, since the disputed domain name is identical to the Complainant's trademark CYLTEZO and that the trademark CYLTEZO is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. Previous UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation, see WIPO Overview 3.0, section 2.5.1.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Complainant has put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

Based on the evidence submitted by the Complainant, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name is constituted by the Complainant's registered trademark CYLTEZO. Registration of the disputed domain name in awareness of the CYLTEZO mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the current passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; (2) the Respondent used a privacy service hiding its identity; and (3) the implausibility of any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0 at section 3.3).

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Accepted

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

1. **CYLTEZO.XYZ**: Transferred
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PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION **2022-04-08**

Publish the Decision
