

**Decision for dispute CAC-UDRP-104826**

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| Case number | <b>CAC-UDRP-104826</b> |
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| Time of filing | <b>2022-09-02 09:08:06</b> |
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| Domain names | <b>arthrolynk.com</b> |
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**Case administrator**

|              |  |
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| Organization | <b>Iveta Špiclová (Czech Arbitration Court) (Case admin)</b> |
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**Complainant**

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| Organization | <b>LABORATOIRES EXPANSCIENCE</b> |
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**Complainant representative**

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| Organization | <b>NAMESHIELD S.A.S.</b> |
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**Respondent**

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| Organization | <b>Spectravision Meditech</b> |
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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 proved the own the French Trademark ARTHROLINK, registered on October 16th, 2000. The Complainant also proved to be the owner of the domain name <arthrolink> registered on March 22, 2000. This domain name hosts the Complainant's website.

## FACTUAL BACKGROUND

The Complainant is the French company Laboratoires Expanscience, active in the pharmaceutical and dermo-cosmetic field for more than 70 years. The Complainant owns the French trademark ARTHROLINK, having effects since October 16, 2000 and the domain name <arthrolink> registered on March 22 2000 and used in the field of osteoarthritis treatment.

The Respondent is Mr. Prapod Memane of Spectravision Meditech. The Respondent filed a response in which he stated that he purchased the disputed domain name as he was launching a new product in the arthroscopy field. The Respondent also informed that he was not aware of the Complainant's business and that he is willing to transfer the domain name to the Complainant for free.

## 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel agrees with the Complainant about the confusing similarity between the disputed domain name, <arthrolynk.com>, and the earlier trademark, Arthrolink.

The disputed domain name is a clear misspelling of the ARTHROLINK trademark (as it differs by the letter "y" instead of "i"). Previous panels confirmed that minor spelling variations do not prevent a domain name to be confusingly similar with the trademark (see, among the others, the case CAC 2020-3457 as well as the WIPO guidelines 3.0., section 1.9.).

The Panel also agrees that the addition of the gTLD ".com" has no impact in the confusing similarity assessment as it will be perceived as a technical element having no distinctive character.

All above considered, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark for the purpose of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

The second element of the Policy requires that the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name. The general approach, when assessing the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to contest it with relevant evidence demonstrating rights or legitimate interests in the domain name (see for example, CAC Case no. 102333).

In its reply, the Respondent contends that the disputed domain name was purchased for an upcoming project in the arthroscopy field. However, the Respondent did not provide any evidence of such future project that will be developed under the domain name <arthrolynk.com> (for instance, examples of preparatory activities).

As a consequence, the Panel rejects such argument as not proved.

The disputed domain name resolves to a parking page containing commercial links. These links are not related to the possible dictionary meaning of <arthrolynk.com>. Thus, the Panel does not consider such use as a legitimate non commercial or fair use or a bona fide offering of goods and services.

Moreover, there is no evidence that the Respondent has rights or legitimate interests in the disputed domain name.

All above considered, the Panel concludes that the Respondent lacks rights or legitimate interests in the disputed domain name.

3. The Respondent registered and used the disputed domain name in bad faith.

The third element requires the Complainant to show that the disputed domain name was registered and has being used in bad faith under par. 4(a)(iii) of the Policy. The bad faith requirement is cumulative: this means that the complainant must establish, on the balance of the probabilities, both registration and use in bad faith.

To the Panel's view, the registration and use of the disputed domain name in this case is not obvious.

As a matter of fact, the Complainant relies only on a national French trademark while the Respondent is an Indian based company. The Complainant did not submit any evidence of use or registration of its trademark in India where the Respondent is based nor any other circumstance that could give rise to actual or constructive knowledge of its trademarks by the Respondent.

On the other side, the disputed domain name (<arthrolynk.com>) could be qualified as a typosquatting case (in particular of the Complainant's "ARTHROLINK" trademark). Indeed, the common element "ARTHRO" could be considered as a descriptive term in the fields of arthritis treatments or arthroscopy. However, its combination with the term "LYNK" is not common and not immediately descriptive. Therefore, registration of ARTHROLYNK could be seen as a way to target the already existing business conducted by the Complainant under the trademark "ARTHROLINK".

In this particular case, the Panel gives particular relevance to the fact that the Respondent in its reply informed that he was willing to transfer for free the disputed domain name to the Complainant. In cases where the respondent has given its consent on the record to the transfer (or the cancellation) of the disputed domain name, previous panels have ordered the requested remedy solely on the basis of such consent (see WIPO Guidelines 4.10). In these cases, the panel generally gives effect to an understood party agreement as to the settlement of the case (whether by virtue of deemed admission or on a no-fault basis). The Panel agrees with such approach.

Therefore, on this basis, the Panel finds that the third and last requirement of the Policy is met.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arthrolynk.com**: Transferred

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## PANELLISTS

|                        |                        |
|------------------------|------------------------|
| Name                   | <b>Andrea Mascetti</b> |
| DATE OF PANEL DECISION | 2022-10-10             |
| Publish the Decision   |                        |

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