

Decision for dispute CAC-UDRP-104868

Case number **CAC-UDRP-104868**

Time of filing **2022-09-26 09:46:06**

Domain names **nexgardfordogs.africa**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Warren Larey**

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 owner of the registered trademark NEXGARD as a word mark in numerous countries all over the world, including in Europe and in the United States, such as:

<u>TRADEMARK</u>	<u>TRADEMARK OFFICE</u>	<u>DATE OF REGISTRATION</u>	<u>TRADEMARK NO.</u>	<u>JURISDICTION</u>
NEXGARD	WIPO	29 May 2013	1166496	INTERNATIONAL
NEXGARD	EUIPO	9 October 2013	011855061	EU

FACTUAL BACKGROUND

According to the Complainant, the company is the number one global player in the pet and equine markets. The Complainant helps to

provide longer and healthier lives for companion animals. The Complainant is the maker of the product NEXGARD, a drug delivered in a beef-flavoured chew that kills adult fleas and is indicated for several treatments of infestations of dogs and puppies.

The disputed domain name was registered on 15 September 2022. The Complainant demonstrates that the website that is operated under the domain name points to a domain parking page.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

According to the Complainant, the disputed domain name incorporates in full the Complainant's trademark NEXGARD. The addition of the associated term FOR DOGS does not distinguish the disputed domain name from the Complainant's NEXGARD trademark, as it is related to the Complainant's products for which the trademark is used. In fact, it rather enhances the impression that the disputed domain name is confusingly similar to the trademark of the Complainant.

The generic Top-Level Domain extension of the disputed domain name, in this case ".africa", is typically disregarded under the confusing similarity test, as it is a standard requirement for registration.

Therefore, the Complainant concludes and the panel agrees that the disputed domain name is confusingly similar to the Complainant's trademark.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not affiliated with nor authorized by the Complainant to make any use of the Complainant's trademark or apply for registration of the disputed domain name. The Complainant states that it does not carry out any activity for, nor has it any business with the Respondent.

The Complainant further states that the disputed domain name resolves to a parking page. The Complainant contends that the Respondent did not make any use of the disputed domain name nor that there is any plan to use the disputed domain name. Past panels concluded that a respondent's failure to provide a product or service or develop the site in relation to the domain name demonstrates that the respondent has not established any rights or legitimate interests in the domain name (see WIPO Case No. D2000-0039,

Ziegenfelder Co. v. VMH Enterprises, Inc.).

The Panel finds that the Complainant has shown that the Respondent has not made legitimate use of the disputed domain name for a bona fide offering of goods or services. In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The disputed domain name is registered and is being used in bad faith

The Complainant refers to past panels that have held that the trademark NEXGARD is well known (see CAC Case No. 104043, *BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE v. Fundacion Privacy Services LTD*: “*The disputed domain name has therefore been registered and is being used in bad faith as it is a registration of a well-known/famous trade mark [NEXGARD].*”). The Complainant demonstrates further that all Google results for the search of the terms NEXGARD FOR DOGS are related to the Complainant and its products.

Consequently, according to the Complainant, given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name. Prior WIPO UDRP panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (see for instance WIPO Case No. D2000-0003, *Telstra Corporation Limited v. Nuclear Marshmallows*).

Moreover, the Complainant also demonstrates that MX servers are configured to the domain name and suggests therefore that the disputed domain name may be actively used for email purposes. Past Panels have held that, if several active MX records are connected to the disputed domain name but there is no present use of the disputed domain name, it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address (see WIPO Case No. D2018-1878, *Robertet SA v. Marie Claude Holler*: “*Furthermore, email servers have been activated for the disputed domain name and it is hard to imagine in which legitimate way such emails would be used. On the contrary, the Respondent could use any email address with the “(…)” suffix for commercial emailing, spamming or phishing purposes.*”)

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nexgardfordogs.africa**: Transferred

PANELLISTS

Name	Tom Heremans
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DATE OF PANEL DECISION 2022-11-21

Publish the Decision
