

## Decision for dispute CAC-UDRP-105083

Case number	CAC-UDRP-105083
Time of filing	2022-12-23 12:07:08
Domain names	nexgardchewablesfordogs.com

### Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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### Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE
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### Complainant representative

Organization	NAMESHIELD S.A.S.
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### Respondent

Name	Danh Hao
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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 (the "Domain Name").

#### IDENTIFICATION OF RIGHTS

The Complainant relies upon various registered trade marks that comprise or incorporate the term "NEXGARD". These include:

- International trade mark registration n° 1166496 in class 5 in respect of NEXGARD as standard characters with a registration date of 29 May 2013, and which has proceeded to grant in approximately 50 territories;
- EU trade mark registration n° 011855061 in class 5 in respect of NEXGARD as a word mark with a registration date of 9 October 2013; and
- International trade mark registration n° 1676177 in class 5 with a registration date of 19 May 2022, which has proceeded to grant in Germany and the EU and which takes the form of the term "NexGard" in stylised text.

#### FACTUAL BACKGROUND

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

The Complainant describes itself as the number one global player in the pet and equine pharmaceuticals markets.

The Complainant uses the term "NEXGARD" for a drug delivered in a beef-flavoured chew that kills adult fleas and is indicated for

the treatment and prevention of flea infestations and the treatment and control of tick infestations in dogs and puppies from eight weeks of age.

The Domain Name was registered on 15 December 2022. It points to a website "combining information regarding the Complainant's NEXGARD-branded product and blog templates". The website also displays the stylised text registered trade mark described in the "Identification of Rights" section of this decision. The operator of the website is not identified in the "ABOUT US" section of the website.

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#### PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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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 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 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

The Complainant clearly is the owner of various registered trade marks that comprise or incorporate the term "Nexgard". The Panel accepts that Domain Name can only be sensibly read as the term "Nexgard" combined with the ordinary English words "chewables for dogs" and the ".com" generic Top-Level Domain. Given this, the trade mark is clearly recognisable in the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

The distinctive nature of the Complainant's mark, the fact that the Domain Name contains text that is descriptive of the Complainant's products and the fact that the website operating from the Domain Name since its registration refers to the Complainant's products and also reproduces its stylised mark, all make it clear that the Domain Name was registered with the knowledge of the Complainant and its mark.

The Complainant contends that the Respondent is attempting "to pass [itself] off as one of the Complainant's affiliate" and the Panel accepts that this is so. Internet users reaching the website operating from the Domain Name are likely to conclude that this is a website operated or authorised by the Complainant or one of its affiliates. The website prominently displays the Complainant's stylised trade mark, contains extensive text describing the Complainant's product and does not disclose that the individual or entity operating this website is someone other than the Complainant or one of its affiliates. There is also a section of the website with the heading "NexGard Where to Buy", which contains the text "You can buy this product online by ordering on our website". This strongly suggests that the Respondent's motives in registering the Domain Name was to draw internet users to the website in order to sell the Complainant's products.

This is, therefore, a case where the Respondent is impersonating the Complainant, most likely for commercial gain. There is no right or legitimate interest in impersonating a trade mark owner, even if this is being done to sell the trade mark owner's products. Similarly, registration and use of a trade mark for such a purpose is registration and use in bad faith. Also leaving aside the issue of impersonation, in order to legitimately use another's trade mark in a domain name for the purposes of selling the products of the trade mark owner, a respondent must also satisfy the "Ok! Data" conditions (see paragraph 2.8 of the WIPO Overview 3.0). That includes the requirement that the site accurately and prominently discloses the registrant's relationship with the trade mark holder. The Respondent has not done this in this case.

Accordingly, the Complainant has satisfied the requirements of paragraphs 4(a)(ii) and (iii) of the Policy.

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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. **nexgardchewablesfordogs.com**: Transferred

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## PANELLISTS

Name	<b>Matthew Harris</b>
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DATE OF PANEL DECISION **2023-02-01**

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**Publish the Decision**

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