

Decision for dispute CAC-UDRP-105265

Case number **CAC-UDRP-105265**

Time of filing **2023-03-08 10:35:50**

Domain names **mobic.world**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Boehringer Ingelheim Pharma GmbH & Co.KG**

Complainant representative

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

Respondent

Organization **Tracebig Global Limited**

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 owns several trademark registrations across various jurisdictions, inter alia the international trademark No. 563599 "MOBIC", registered since November 28, 1990 (hereinafter referred to as the "Trademark").

The Respondent did not identify any rights or evidence in this regard.

FACTUAL BACKGROUND

The Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein, Germany. Ever since the Complainant has become one of the world's leading pharmaceutical companies.

The Complainant owns several domain names which include the Trademark including the domain name <mobic.info> registered since July 31, 2001.

The disputed domain name <mobic.world> was registered on February 19, 2023 and is not used in connection with an active website.

The Respondent replied via email to the Centre twice. The first email was within the deadline for response (deadline: April 3, 2023), on March 31, 2023, whereas the second email was sent on April 4, 2023. In those emails the Respondent does not identify himself, except for stating that he is "*not educated to the extent of understanding all the issues here.*" and that he likely seems to argue that he has a startup business that has "*ict training and website service not related to drugs or any medical.*"

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is identical to the Trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, that it is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent must have been aware of the Complainant and its distinctive Trademark at the time of registration of the disputed domain name and that the Respondent's non-use of the disputed domain name is evidence of bad faith.

RESPONDENT:

In the aforementioned two emails, the Respondent is mainly stating that the disputed domain name was available and for sale and that this is why he bought it. He is stating that in case there is any fault in buying the disputed domain name the Registrar should come up for this and that it is not his fault. Furthermore, the Respondent stated that "*If the complainant wants me to leave the domain for them, then let them pay me for making me invest in the domain from THE onset, then I will free the domain*". Also, the Respondent is seeing this action as harassment and disturbance, which is not letting him focus on his start-up business. The second email of April 4, 2023 was mainly expressing again the same arguments and complaints, and furthermore stated the opinion that the Complainant should have contacted the Respondent first before initiating the current proceedings and that the Respondent has spent money for buying the disputed domain name and he has "*invested in all branding and marketing, (..)*".

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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Furthermore, Respondent's default in the sense that he did not file a "formal response" is not seen by the Panel as a reason to not be able to assess the Respondent's emails. Respondent's second email, which was filed after the deadline for response, shall be freely determined by the Panel with regard to its admissibility, relevance, materiality and weight of the evidence (according to para. 10.10 of the UDRP Rules).

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three specific elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is identical to the Trademark as it fully incorporates it. It is also well established that the suffix of a domain name, such as ".com", ".world" etc. is a standard registration requirement and as such is disregarded under the first element confusion similarity test. Furthermore, the Respondent did not deny these facts and did not mention any arguments against Complainant's trademark rights.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not go into the specific assertions (except for the argument that since the disputed domain name was for sale, he bought it - which is irrelevant under the elements of the UDRP) and did not deny them in any way, and therefore failed to prove any rights or legitimate interests in the disputed domain name.

3.1 The Panel is satisfied that the Respondent is most likely to have registered the disputed domain name with knowledge of the Complainant and its rights in the Trademark as the Trademark is highly distinctive. The Panel agrees that the Trademark consists "of a fanciful or "coined" term" (See WIPO Case No. D2016-1267 Boehringer Ingelheim International GmbH v. Anna German), that is not easy to confuse with any other term or ignore its distinctiveness. The Respondent does not clearly argue that he did not know about the Complainant and his rights, but is only mentioning that since the disputed domain name was for sale, he just bought it. This does not qualify though as a valid defence against Complainant's arguments for bad faith registration and the Panel does not find enough evidence to believe that the Respondent registered the domain name in ignorance of the Complainant and its rights.

3.2 Furthermore, even if the disputed domain name has not been used in connection with an active website, the Panel finds that there has been a bad faith use. It is well established that the apparent lack of a so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. (See WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2005-1005, Polaroid Corporation v. Jay Strommen).

Moreover, the Respondent is asserting that:

- 1. i) the Complainant should have contacted him before the "court" proceedings (Email from April 4, 2023: "*The complainant on the first instant should have contacted me through the domain registrar before proceeding to the court.*");
- 2. ii) that the Complainant should pay him if he wants the disputed domain name (Email from March 31, 2023: "*If the complainant wants me to leave the domain for them, then let them pay me for making me invest in the domain from THE onset, then I will free the domain*"; and
- iii) that he (the Respondent) has invested in branding and marketing and in light of these proceedings he feels victimized (Email from April 4, 2023: "*I bought the domain with my money, and I have invested in all branding and marketing, if anyone feels he or she should victimize me, by making me suffer, he can go ahead.*").

The first two points suggest that the Respondent would want to sell the disputed domain name to the Complainant, and this qualifies for the scenario described under para. 4(b)(i) Policy, which constitutes proof of bad faith registration and use. The third point could be seen as demonstrable preparations to use the disputed domain name, in connection with a bona fide offering of goods or services, however, the Respondent does not deliver any further evidence to that.

The passive holding but also the offering towards the Complainant to pay for the disputed domain name if it wants to have it back, is proving the mentioned circumstances under para. 4(b)(i) Policy and satisfying therefore the bad faith use element.

Accordingly, the Panel finds that the Respondent has registered and is using 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. **mobic.world**: Transferred

PANELLISTS

Name **Stefanie Efstathiou LL.M. mult.**

DATE OF PANEL DECISION 2023-05-01

Publish the Decision