

Decision for dispute CAC-UDRP-105428

Case number	CAC-UDRP-105428
Time of filing	2023-05-10 10:09:17
Domain names	tradjentagoodrx.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	BOEHRINGER INGELHEIM INTERNATIONAL GMBH
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Fundacion Comercio Electronico
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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 is a registered owner of the following trademark containing a word element "TRADJENTA":

(i) TRADJENTA (word), US National Trademark, registration date 21 January 2011, trademark no. 4103139, registered for goods in the international class 5.

(referred to as "Complainant's trademark").

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the terms "TRADJENTA", for example domain name <tradjenta.com> used by the Complainant to offer and promote products under the TRADJENTA brand (tablets for treatment of type 2 diabetes).

FACTUAL BACKGROUND

The Complainant (Boehringer Ingelheim Pharma GmbH & Co.KG). is German 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.

The Complainant uses the TRADJENTA trademark in connection with preparations for a treatment of type 2 diabetes.

The disputed domain name <tradjentagoodrx.com> was registered on 14 April 2023 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) is not genuinely used and merely redirect to a third party parking page with various commercial links.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

The Complainant states that:

- The Complainant's trademark is used at least on the US market and enjoy reputation. Past Panels have confirmed the notoriety of the trademark consisting of the term "TRADJENTA" in various UDRP cases.
- The disputed domain name contains "GOOD" and "RX" word elements, and it is thus almost identical (i.e. confusing similarity) to Complainant's trademark.
- As for the first disputed domain name, an addition of generic terms "GOOD " and "RX" is not sufficient to escape confusingly similarity between the disputed domain name and Complainant's trademark.
- Such addition does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.
- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant the confusing similarity between the Complainant's trademark and the disputed domain names is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.
- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademark in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.
- Furthermore, the disputed domain name links to a parking page. Therefore, the Complainant contends that Respondent has not made any genuine use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name.
- The Complainant refers to previous domain name decisions in this regard.

Thus, the Complainant contends that the Respondent has no legitimate interests in respect of the disputed domain name.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Priority of the Complainant's trademark predates the disputed domain name registration and such trademark is well known in relevant business circles. The Respondent can be considered to be aware of the Complainant's trademark when registering the domain name due to use thereof, which should have been checked by the Respondent by performing a simple internet search.
- The disputed domain name (at the time of filing of the complaint) resolve to a mere parking site with no genuine content. In the light of the foregoing, the Complainant asserts that the disputed domain name was registered and is being used with the sole purpose of selling the disputed domain name to the Complainant or a third party.
- The Complainant refers to previous domain name decisions in this regard.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

CONFUSING SIMILARITY WITH COMPLAINANT'S RIGHTS

Since the disputed domain name and the Complainant's trademark are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "TRADJENTAGOODRX.COM" is confusingly similar to the Complainant's trademark.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

The disputed domain name and the Complainant's trademark are very similar since they differ in a mere addition of GOOD" and "RX" word elements. This, however, cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademark and thus the likelihood of confusion still exists. A mere addition of non-distinctive terms to distinctive and imaginative component "TRADJENTA" cannot sufficiently distinguish the disputed domain name from the Complainant's trademark.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is confusing similarity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by a concrete evidence that it does have rights or legitimate

interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Respondent has not used the disputed domain name in any manner, however, the Panel concludes (as it has been ruled in many similar cases, as for example Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org>, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574, <jupiterscasino.com>, Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131, <ladbrokespoker.com>) that the apparent lack of so-called genuine active use (e.g. to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include cases in which (i) the Complainant has a generally known trademark and (ii) there is no genuine use (e.g. a mere "parking" or linking to a parking site) of the disputed domain name by the Respondent (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals).

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having a knowledge about the existence of the Complainant's rights and business (ii) there is no real use of the dispute domain name, and (iii) the Respondent attempts to disrupt Complainant's business and attract, for commercial gain, users to the disputed domain name which features click-through advertisements that redirect users to pay-per-clicks links, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. tradjntagoodrx.com: Transferred

PANELLISTS

Name	Jiří Čermák
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DATE OF PANEL DECISION	2023-06-07
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Publish the Decision