

Decision for dispute CAC-UDRP-105615

Case number	CAC-UDRP-105615
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Time of filing	2023-07-12 10:01:47
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Domain names	jardiance.shop
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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

Name	tony liu
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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 owns a portfolio of brands including the word "JARDIANCE" in several countries, including the international trademark JARDIANCE® n° 981336 registered since September 3, 2008.

FACTUAL BACKGROUND

The Complainant is a 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. Ever since, BOEHRINGER has become one of the top 20 companies in the pharmaceutical industry with over 53,000 employees.

The disputed domain name <jardiance.shop> was registered on July 3, 2023 and resolves to a parking page with commercial links.

PARTIES CONTENTIONS

The Complainant contends 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.

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).

The disputed domain name <jardiance.shop> is identical to its trademark JARDIANCE®. Indeed, the domain name includes in its entirety the above-mentioned trademark without any adjunction of letter or word.

It is well established that the new GTLD is viewed as a standard registration requirement and as such is disregarded. Please see Forum Case No. FA 153545, Gardline Surveys Ltd v. Domain Finance Ltd. ("The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.").

Finally, the Complainant's rights over the term JARDIANCE have been confirmed by previous panels. Please see for instance CAC Case No. 102405, Boehringer Ingelheim International GmbH v. smartpatient gmbh <jardiance.app>; CAC Case No. 102886, Boehringer Ingelheim International GmbH v. Innika <jardiance.surf>; WIPO Case No. DCO2021-0001, Boehringer Ingelheim International GmbH v. JH Kang <jardiancesavings.co>; CAC No. 104075, Boehringer Ingelheim International GmbH v. Pearl Quest Computer Systems and Software Design LLC <jardiance.live>.

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).

According to the WIPO case No. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Respondent is not known in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <jardiance.shop> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark JARDIANCE®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name resolves to a parking page with commercial links).

Thus, the Respondent has no legitimate interests in respect of the disputed domain name <jardiance.shop>.

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).

The disputed domain name <jardiance.shop> is identical to its distinctive trademarks JARDIANCE®.

The JARDIANCE®'s trademark is registered in TMCH since July 27th, 2015. Moreover, its trademark predates the registration of the domain name <jardiance.shop>.. Finally, a Google search of the term "JARDIANCE" displays results only in relation with the Complainant's products).

Therefore, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its trademarks, which is an evidence of bad faith.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

Please see for instance WIPO Case No. D2018-0497, *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* (“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”).

Therefore, the disputed domain name <jardiance.shop > was registered and is being used in bad faith.

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

The JARDIANCE®’s trademark is registered in TMCH since July 27, 2015. Moreover, its trademark predates the registration of the domain name <jardiance.shop>.. Finally, a Google search of the term “JARDIANCE” displays results only in relation with the Complainant’s products.

Therefore, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its trademarks, which is an evidence of bad faith.

Furthermore, the disputed domain name resolves to a parking page with commercial links.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **jardiance.shop**: Transferred

PANELLISTS

Name	Thomas Hoeren
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DATE OF PANEL DECISION 2023-08-03

Publish the Decision