

Decision for dispute CAC-UDRP-105917

Case number **CAC-UDRP-105917**

Time of filing **2023-10-26 09:46:44**

Domain names **jardiance.life**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Boehringer Ingelheim International GmbH**

Complainant representative

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

Respondent

Name **janis yan**

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 the international trade mark JARDIANCE, registration number 981336, first registered on 3 September 2008 in international class 5. The Complainant's trade mark registration predates the registration of the disputed domain name.

The Complainant also owns the domain name <Jardiance.com>, registered on 30 April 2008, which consists of and incorporates the name JARDIANCE and is connected to the Complainant's official website through which it informs Internet users and customers about its JARDIANCE product.

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 in Ingelheim am Rhein. Today, the Complainant is one of the world's leading research-driven pharmaceutical companies with about 140 affiliate companies world-wide and over 53,000 employees. The three business areas of Boehringer Ingelheim are human pharmaceuticals, animal health and bio pharmaceuticals. In 2022, net sales of the Boehringer Ingelheim group amounted to about EUR 24.1 billion. JARDIANCE (Empagliflozin) is a prescription medicine used along with diet and exercise to lower blood sugar in adults with type 2 diabetes, and also to reduce the risk of cardiovascular death in adults with type 2 diabetes who have a known cardiovascular disease.

The disputed domain name <jardiance.life> was registered on 21 October 2023 and resolves to a parking page with commercial links; MX records have also been configured.

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 trade mark 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

With regard to the first UDRP element, the Panel finds that the disputed domain name is identical with the Complainant's trade mark JARDIANCE. Indeed, the disputed domain name incorporates the Complainant's trade mark in its entirety without any alteration. The Panel follows in this respect the view established by numerous other decisions that a domain name which wholly incorporates a Complainant's registered trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliiy Terkin <porsche-autoparts.com>).

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. The Panel follows in this regard the view established by numerous other decisions that use of a domain to host a parked page comprising commercial links does not represent a bona fide offering of goods or services where such links compete with or capitalise on the reputation and goodwill of the complainant's trade mark, or otherwise mislead Internet users (see, for example, Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend <vancesecurity.com>, <vancesecurity.net>, <vancesecurity.org> (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe <mayflowermovers.com> ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.")). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade mark or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name <jardiance.life>. 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, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as

“Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”). Against this background, and absent 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.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant’s trade mark, and that the Respondent registered the disputed domain name in full knowledge of the Complainant’s trade mark. Indeed, if the Respondent had carried out a Google search for the term “Jardiance”, the search results would have yielded immediate results related to the Complainant, its website, and its connected business and products. Indeed, it is likely that the disputed domain name would not have been registered if it were not for the Complainant’s trade mark (see, for example, WIPO Case No. D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). Furthermore, the website related to the disputed domain name resolved to a parking page with commercial links. Based on the decisions of other panels in similar cases, the Panel regards this as an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant’s trade mark, and as further evidence of bad faith (see, for example, WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC <studiocanalcollection.com> (“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.”)). Finally, the disputed domain name has been set up with MX records, which suggests that it may be used actively for email purposes. The Panel accepts the Complainant’s submission that this is a further indication of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose (see, for example, CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono <igpdecaux.net > (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that 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.”)). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts 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. **jardiance.life**: Transferred

PANELLISTS

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|------|---------------------------------------|
| Name | Gregor Kleinknecht LLM MCI Arb |
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DATE OF PANEL DECISION 2023-12-03

Publish the Decision
