

Decision for dispute CAC-UDRP-105970

Case number	CAC-UDRP-105970
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Time of filing	2023-11-13 09:39:06
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Domain names	mobic.icu
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Ilgam Nurtdinov
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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 the owner of the stylised word figurative mark MOBIC registered as an international mark no. 563599 in various countries and applied for on 28 November 1990. It indicated that it has many national marks and a portfolio of marks worldwide.

The Complainant also owns several domain names including the word "MOBIC", such as <mobic.info> registered since 2001.

FACTUAL BACKGROUND

The Complainant is a family-owned pharmaceutical group founded in 1885, by Albert Boehringer in Ingelheim am Rhein. BOEHRINGER INGELHEIM has become a global research-driven pharmaceutical enterprise and today has some 52,000 employees. The three business areas of the group are Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In 2021, the group had net sales of some EUR 20.6 billion. One of the Complainant's products is MOBIC (generic name: meloxicam) a nonsteroidal anti-inflammatory drug (NSAID) that reduces hormones that cause inflammation and pain caused by osteoarthritis or rheumatoid arthritis.

The disputed domain name <mobic.icu> was registered on 10 October 2023 and resolves to a page entitled "Buy Mobic (Meloxicam) online – Best Price." The tab "BUY SAFE" resolves to an online pharmacy entitled "Mobic – Pain Relief" where the Complainant's MOBIC branded products are offered for sale. Nothing is known about the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name <mobic.icu> is identical to its trademark MOBIC and the disputed domain name includes the mark in its entirety. The Complainant says the addition of the new gTLD suffix “.ICU” does not change the overall impression or prevent the likelihood of confusion.

As to Legitimate Rights and interests, the Complainant asserts that as the Respondent is not identified in the Whois as the disputed domain name, the Respondent is not commonly known by the disputed domain name. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way with the Complainant. The Complainant has no business dealings with the Respondent. Neither licence nor authorization has been granted to the Respondent. The Complainant says the use made of the disputed domain name does not represent a bona fide offering of goods or services or a legitimate use.

As to bad faith, the Complainant contends that the disputed domain name <mobic.icu> is identical to its trademark MOBIC and includes it in its entirety. Moreover, the Complainant contends that the Respondent must have been aware of the Complainant's trademark when it registered the disputed domain name as the disputed domain name resolves to a website that makes direct reference to the MOBIC products and offer these products for sale. The Respondent deliberately sought to use their goodwill to attract Internet users seeking the Complainant's product. The Respondent has registered and used the disputed domain name in order to deceive such Internet users seeking the Complainant's product, so as to generate revenue from selling unrelated or competing pharmaceuticals. This constitutes bad faith registration and use within the meaning of the Policy. Per WIPO Case No. D2016-0823, Boehringer Ingelheim Pharma GmbH & Co. KG. v. Williams Shorell.

RESPONDENT:

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).

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

The Complainant contends that the disputed domain name <mobic.icu> is identical to its trademark MOBIC and that the disputed domain name includes the name and mark in its entirety. The Complainant correctly contends that for the first factor under the Policy, the addition of the suffix “.ICU” is not relevant. It can be relevant to the other factors.

The Panel finds the Complainant has registered rights in a name or mark similar to the disputed domain name.

This case turns on the second factor.

The Panel accepts the Complainant's assertions that the Respondent is not affiliated with nor authorised by the Complainant. 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.

However, this is not the end of the inquiry. Under paragraph 4(a)(ii) of the Policy, a Complainant must prove that the Respondent has no rights or legitimate interests in respect of the domain name. The non-exhaustive grounds upon which it may rely are set out in paragraph 4(c) of the Policy and so the following may evidence rights or legitimate interests: (i) a bona fide offering of goods or services; (ii) being commonly known by the name; and (iii) making legitimate non-commercial or fair use of the domain name. The first category of bona fide offering encompasses third parties such as resellers, sales agents and licensees who have a right in law to use the mark in issue. The third category maps to the various defences in international trade mark norms for free speech and descriptive and nominative use of marks. Both are potentially engaged here on the face of the matter.

The Complainant submitted evidence which shows the disputed domain name is used to resolve to a page which shows the following: "Buy Mobic (Meloxicam) online – Best Price" and the tab "BUY SAFE" resolves to an online pharmacy entitled "Mobic – Pain Relief" where the Complainant's MOBIC branded products are offered for sale. This is at <http://worldpharm24.com/categories/Pain-Relief/Mobic>.

Based on the evidence, the links were to advertisements for the Complainant's own drug and the drug offered at that online pharmacy may be the genuine drug, made by the Complainant. The pharmacy is held out as a Canadian pharmacy.

Yet, the Complainant provided evidence that the drugs require a valid prescription.

Furthermore, domestic Canadian online pharmacies must meet specific requirements and comply with further basic local law requirements (require a valid prescription, a physical address, a local license where the pharmacy is operating and a licensed pharmacist to answer questions) which do not appear to be met by the Respondent's website with a simple look at the clearcut absence of these requirement or misleading one including the fact that for the concerned products "no prescription is required" which is according to the evidence provided with is untrue.

See <https://www.canada.ca/en/health-canada/services/buying-drugs-over-internet.html>

It thus cannot be concluded that the domain name is to be use by a genuine reseller. And 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 trademark registration rights predate the domain name registrations, and the allegations that the trademark is well-known in its field has not been rebutted. The Respondent can be considered to be aware of the Complainant's trademark when registering the domain names, as obviously also follows from the way the domain names are currently being used and the number of domains registered in the instant proceeding.

The Respondent is clearly attempting to attract, for commercial gain, Internet users to an online location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the online location and of the products offered for sale thereon.

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.icu**: Transferred

PANELLISTS

Name	David-Irving Tayer
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DATE OF PANEL DECISION 2023-12-17

Publish the Decision
