Decision for dispute CAC-UDRP-106309

Case number	CAC-UDRP-106309
Time of filing	2024-02-29 10:28:34
Domain names	testogel.space

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BESINS HEALTHCARE LUXEMBOURG SARL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	David Larosa

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trade marks that comprise or incorporate the term “TESTOGEL”, including the following:

(i) International trade mark no. 458834 filed on 5 March 1981 for TESTOGEL for goods in class 5, which has proceeded to registration in 15 territories; and

(ii) International trade mark no. 781129 filed on 17 May 2002 for TESTOGEL for goods in class 5, which has proceeded to registration in China.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant is a global pharmaceutical company founded in 1885 and based in Monaco. It employs more than 1500 employees worldwide.

The Complainant's activities include the development of hormone therapy drugs, and the Complainant considers itself to be a world

leader in novel therapies and drugs in the fields of gynaecology and andrology; including in relation to menopause, the urogenital sphere, endometriosis, contraception, obstetrics, couple fertility and testosterone deficiency.

As part of its activities, the Complainant has developed and deals in a gel for treating testosterone deficiencies under the name TESTOGEL.

The Domain Name was registered on 19 January 2024 and shortly prior to the filing of the Complaint resolved to a website purporting to have been "developed" by Besins Healcase (UK) Ltd and purporting to provide information in respect of the Complainant's Testogel product for Healthcare professionals, persons prescribed with that product, and the general public.

Besins Healcase (UK) Ltd is a subsidiary of the Complainant. However, the website operating from the Domain Name is not in fact operated by that entity.

The Domain Name has been set up with MX records , which suggests that it may be being actively used for email purposes.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the 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 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 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 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 has demonstrated trade mark rights for TESTOGEL and the Domain Names can most sensibly be read as that term combined with the ".space" new gTLD. Accordingly, the Complainant's trade mark is clearly recognisable in the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

The Panel is also satisfied that the Domain Name has been registered and held by the Respondent in order to fraudulently impersonate of a subsidiary of the Complainant. This is clear from the website that has operated from the Domain Name, which falsely claims to be operated by Besins Healcase (UK) Ltd.

Exactly why the Respondent is impersonating the Complainant's subsidiary is not clear, although the Panel notes the Complainant's reference to the configuration of MX records and that its claim that the Domain Name may, therefore, be being used for email purposes. Although not expressly stated, the claim here appears to be that the Domain Name might be being used to send emails purporting to come from the Complainant or its subsidiary, when they do not. However, regardless of the exact reasons why the Domain Name has been registered and is being held, there is no right or legitimate interest in registering and holding a domain name

for fraudulent impersonation of a trade mark holder and such registration and use is in bad faith. The Complainant has, therefore, satisfied the requirements of paragraphs 4(a)(ii) and (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. **testogel.space**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2024-04-02

Publish the Decision