# Decision for dispute CAC-UDRP-106637

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| Case number | CAC-UDRP-106637 |
| Time of filing | 2024-06-21 09:38:28 |
| Domain names | nexgardcol.com |

## Case administrator

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| Name | Olga Slanařová (Case admin) |

## Complainant

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| Organization | BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE |

## Complainant representative

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| Organization | NAMESHIELD S.A.S. |

## Respondent

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| Name | Heinz Sohm |

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 several trademark registrations across various jurisdictions, inter alia

- The International trademark NEXGARD®, No. 1166496 registered since May 29, 2013;
- The European trademark NEXGARD®, No. 011855061 registered since October 9, 2013;
- The International trademark NEXGARD®, No. 1676177 registered since May 19, 2022 (hereinafter referred to as the "Trademark").

The Respondent did not identify any rights or evidence in this regard.

FACTUAL BACKGROUND

The Complainant is connected to the 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, Germany. More specifically the Complainant is the Business Unit that deals with animal health.

The disputed domain name <nexgardcol.com> was registered on June 19, 2024 and it points to a website selling pet food and accessories, including the NEXGARD-branded products.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, that it is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name by the Complainant. Moreover, the Complainant contends that since the disputed domain name resolves to a website selling a variety of products for pet, especially NEXGARD-branded products and competitive products, the website contains no mention of the lack of a relationship with Complainant and therefore, its activities fail to meet the Oki Data standard (see Oki Data Americas Inc v. ASD Inc, D2001-0903, WIPO Nov. 6, 2001).

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent must have been aware of the Complainant and its distinctive Trademark at the time of registration of the disputed domain name and that the Respondent's non-use of the disputed domain name is evidence of bad faith.

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three specific elements is present:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark as it fully incorporates it. The generic terms "COL" next to the Trademark does not eliminate the confusing similarity of the disputed domain name towards the Trademark. It is also well established that the suffix of a domain name, such as ".com", is a standard registration requirement and as such is disregarded under the first element of confusing similarity test.

2. 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 Respondent did not reply to Complainant's assertions, did not provide any evidence to the contrary, and therefore failed to prove any rights or legitimate interests in the disputed domain name.

3.1 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 and well-known.

3.2 Additionally, the content of Respondent's website supports an inference of bad faith use. The Panel agrees with Complainant's contentions that Respondent's website is impersonating the Complainant or, at a minimum, disrupts Complainant's business by offering services in direct competition with the Complainant. It is well established, that bad faith pursuant to Policy ¶¶ 4(b)(iii) and (iv) is found when a respondent uses a confusingly similar domain name to attract Internet users and monetarily capitalize on that confusion, and this is the case here.

Furthermore, the Respondent failed to file a Response and therefore did not provide evidence of any actual or contemplated good faith use of the disputed domain name. In the view of the Panel, the facts of this case do not allow for any plausible actual or contemplated active use of the disputed domain name by the Respondent in good faith. The Panel is convinced that the Complainant has also satisfied 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. **nexgardcol.com**: Transferred

## PANELLISTS

| Name | **Stefanie Efstathiou LL.M. mult.** |
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DATE OF PANEL DECISION 2024-07-29

Publish the Decision