Decision for dispute CAC-UDRP-106712

Case number	CAC-UDRP-106712
Time of filing	2024-07-16 12:59:49
Domain names	nexgard-brasil.shop

Case administrator

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

Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	João Carlos Linhares

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 registered owner of several trademarks for "NEXGARD", including international trademark registration no. 1166496 "NEXGARD", registered since May 29, 2013 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant belongs to the Boehringer Ingelheim group, a German pharmaceutical company, which is one of the animal healthcare global leaders. NEXGARD is a drug delivered in a beef-flavoured chew that kills adult fleas and is indicated for the treatment and prevention of flea infestations and the treatment and control of tick infestations in dogs and puppies from eight weeks of age.

The disputed domain name was registered on July 11, 2024, and points to a placeholder website provided by the Respondent's hosting provider.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant alleges that the disputed domain name is confusingly similar to the Trademark because it contains the Trademark in its entirety and the addition of the geographical term "Brasil" is not sufficient to avoid a finding that the domain name is confusingly similar to the mark.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and is therefore is not commonly known by the disputed domain name. The Complainant further states that the Respondent is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not perform 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. The Complainant further alleges that the disputed domain name resolves to a parking page and that the Respondent has therefore not made any use of disputed domain name and lacks legitimate interests in respect of the disputed domain name.

Finally, the Complainant alleges that the disputed domain name has been registered and is being used in bad faith. Concerning bad faith registration, the Complainant alleges that the Trademark is well known, as confirmed by previous UDRP decisions, and that the disputed domain name refers to the Complainant's activities in Brazil. It argues that it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark because of the distinctiveness and reputation of the Trademark. As to bad faith use, the Complainant relies on the passive holding doctrine and contends that the Respondent has not demonstrated any activity with respect to the disputed domain name and that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be unlawful, such as passing off, infringement of consumer protection laws, or an infringement of the Complainant’s trademark rights.

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

Paragraph 4(a) of the Policy requires the Complainant to establish each of the following three elements:

(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 because the Trademark is recognizable in the disputed domain name. It is well established that a domain name that fully incorporates a trademark may be confusingly similar to such a trademark within the meaning of the Policy despite the addition of generic terms such as "brasil".

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 has not denied these allegations and has therefore failed to establish any rights or legitimate interests in the disputed domain name.

Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the disputed domain name points to a placeholder website provided by the Respondent's hosting provider and the Respondent have not provided any evidence of use or demonstrable preparations for use of the disputed domain name. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is highly distinctive and very well established.

Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith under the principles of passive holding. It is consensus view that the lack of an active use of a domain name does not as such prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, the respondent's concealment of identity, and the impossibility of conceiving a good faith use of the domain name (cf Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574; Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131).

The Panel is convinced that the Trademark is highly distinctive and well-established. 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 therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent's non-use of the disputed domain name equals to use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nexgard-brasil.shop**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2024-08-11

Publish the Decision