Decision for dispute CAC-UDRP-106710

Case number	CAC-UDRP-106710
Time of filing	2024-07-16 12:59:49
Domain names	nexgard-brasil.online

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Raimundo Ramos

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, amongst others, of the following trademark registrations:

1) International trademark "NEXGARD" n° 1166496 registered on May 29, 2013, and duly renewed for class 5;

2) International trademark "NEXGARD" (dev.) n° 1676177 registered on May 19, 2022 for class 5;

3) European Union trademark "NEXGARD" n°11855061 registered on October 9, 2013, and duly renewed for class 5.

FACTUAL BACKGROUND

The Complainant belongs to the Boehringer Ingelheim Group, a German pharmaceutical company, which is one of the animal healthcare global leaders. The Complainant informs that, as the number one global player in the pet and equine markets, the BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE Business Unit helps to provide longer and healthier lives for companion animals. As per the Complainant statements, the trademark "NEXGARD" is used by BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE to distinguish 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 <nexgard-brasil.online> was registered on July 6, 2024.

The Complainant states that the disputed domain name <nexgard-brasil.online> is confusingly similar to its trademark "NEXGARD". In particular, in the Complainant's view, the addition of the geographical term “BRASIL” is not sufficient to escape the finding that the domain name is confusingly similar to the trademark "NEXGARD".

Furthermore, the Complainant contends that the Respondent is not identified in the Whois database as the disputed domain name and that the same Respondent is not affiliated with nor authorized by the Complainant in any way to use the trademark "NEXGARD". The Complainant also notes that the disputed domain name resolves to a website selling a variety of products for pet, especially "NEXGARD" branded products and competitive products, and that such use of the domain name in dispute may not be considered as a bona fide offering of goods or services nor as a legitimate noncommercial or fair use of the disputed domain name. Accordingly, it is the Complainant's view that the Respondent has no rights or 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. In particular, in the Complainant's view, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark because of the distinctiveness and reputation of the trademark "NEXGARD" at the time in which the domain name in dispute was registered. In addition, according to the Complainant, using the Complainant's mark NEXGARD to offer products for pet is clear evidence of bad faith as it is a way to disrupt the business of the owner of the relevant mark.

PARTIES CONTENTIONS

Complainant´s contentions are summarized above.

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 provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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 disputed domain name fully includes the Complainant's trademark. Also, it is added to the word "NEXGARD" the word "BRASIL" (preceded by a simple hyphen). In this respect the Panel notes that many previous panels under the Policy have found that a geographic identifier in a domain name (as in the disputed domain name <nexgard-brasil.online>) does not alter the finding of similarity between the domain name in dispute and the previous registered trademark (see, among others, Six Continents Hotels, Inc. v. Sdf fdgg, WIPO Case No. D2004-0384, Credit Agricole SA v. Frederik Hermansen, CAC Case No. 101249 and BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE v. João Carlos Linhares, CAC Case No. 106712). Finally, the generic Top-Level Domain ".online" is obviously a mere standard registration requirement and should be disregarded when assessing whether a disputed domain name is confusingly similar to the trademarks in which the Complainant has rights. Accordingly, the Complainant has, to the satisfaction of the Panel, shown that the domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain names as it is not commonly known under the disputed domain name and was never authorized to use the "NEXGARD" mark in the disputed domain name by the Complainant. Furthermore, the Panel agrees with the Complainant that the use of the dispute domain name for a website selling a variety of products for pet, especially "NEXGARD" branded products and competitive products, may not be considered as a bona fide offering of goods or services nor as a legitimate noncommercial or fair use of the disputed domain name. The Respondent, in the absence of any response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds on the second element of the Policy.

3) Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Respondent registered the disputed domain name many years after the use and registration of the "NEXGARD" mark by the Complainant. In consideration of the reputation achieved by "NEXGARD" it is clear that the Respondent was surely aware of the Complainant trademark when he registered the domain name in dispute. Moreover, the Respondent appears to have attempted to benefit commercially from the appropriation of the "NEXGARD" mark in the disputed domain name. The use of the famous mark "NEXGARD", well-known worldwide in the animal drugs sector, for selling healthy products for pets, clearly indicates that the disputed domain name was chosen by the Respondent to take advantage of the Complainant´s mark reputation. This finding leads to the obvious conclusion that the disputed domain name has been registered in bad faith (Research In Motion Limited v. Privacy Locked LLC/Nat Collicot - WIPO Case No. D2009-0320; The Gap, Inc. v. Deng Youqian - WIPO Case No. D2009-0113; AXA S.A. v. P.A. van der Wees - WIPO Case No. D2009-0206; BHP Billiton Innovation v. Ravindra Bala - WIPO Case No. D2008-1059).

The Panel also finds that, by linking the disputed domain name to a website offering for sale "NEXGARD" products, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by causing a likelihood of confusion with the trademark "NEXGARD" as to the source, sponsorship, affiliation or endorsement of its websites and the products promoted therein. The conduct described above clearly falls within paragraph 4(b)(iv) of the Policy (Triumph International Vietnam Ltd v. Tran Quoc Huy - WIPO Case No. D2017-0340).

In consideration of the above, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith. The Complainant therefore succeeds also on the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Guido Maffei**

DATE OF PANEL DECISION 2024-08-13

Publish the Decision