Decision for dispute CAC-UDRP-106711

Case number	CAC-UDRP-106711
Time of filing	2024-07-16 12:58:42
Domain names	nexgardbrasil.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

Organization	Epoca Cosmeticos Oficial

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 proved to be the owner of the following NEXGARD trademarks:

- International trademark reg. n° 1166496 registered since May 29, 2013;

- European Union trademark reg. n° 011855061 registered since October 9, 2013;

- International trademark reg. n° 1676177 registered since May 19, 2022.

FACTUAL BACKGROUND

The Complainant is active in the field of health products for animals.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant supports that the disputed domain name is confusingly similar to its prior trademarks since the sign NEXGARD is entirely comprised in the disputed domain name. The addition of the geographical element "BRAZIL" does not exclude the likelihood of confusion.

The Complainant denies that the Respondent has any rights on the disputed domain name nor that the use of it amounts to a legitimate non-commercial use or a bona fide offering of goods and services for the purpose of the Policy.

The Complainant contends that the disputed domain name was registered in bad faith as at the time of the registration the Respondent was certainly aware of the Complainant exclusive rights on the trademark NEXGARD. Furthermore the use of the disputed domain name is considered in bad faith as the website to which <nexgardbrasil.shop> redirected was confusingly similar to the Complainant's website and reproduced the Complainant's trademark used in the same field of business in which the Complainant is active.

RESPONDENT:

The Respondent did not file any administrative response.

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

1.The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant agrees that the disputed domain name is confusingly similar to the NEXGARD trademarks. According to a consolidated case law if the trademark is entirely comprised in the disputed domain name, the threshold requested by the First element of the Policy is met.

In the Panel's view the addition of the geographical term "BRASIL" increases rather than excludes the risk of confusion for the public as it could be associated to the local branch or distributor of the Complainant.

Furthermore the addition of the ".shop" gTLD is generally disregarded for assessing confusing similarity in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a response to the Complaint. Therefore, it has filed no information on possible rights or legitimate interests it might hold on <nexgardbrasil.shop>. On its part, the Complainant has submitted information and arguments which, according to the Panel, are sufficient to conclude that the Respondent has no rights or legitimate interest in the disputed

domain name.

According to the information provided by the Complainant, and not contested, the Respondent is not commonly known by the disputed domain name nor it has been authorized to use the Complainant's trademark.

The Panel agrees that the use of the disputed domain name does not amount to a bona fide offering of goods and services nor to a legitimate non-commercial use for the purpose of the Policy. The Complainant proved that the disputed domain name redirected to a website that could be perceived as part of the Complainant's official network since it contains the Complainant's figurative trademark and images of the Complainant's products.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

3. The disputed domain name has been registered and is being used in bad faith.

The Respondent was clearly aware that the Complainant conducted its business under the NEXGARD trademark as:

i) the disputed domain name was registered well after the Complainant's trademark registrations;

ii) the trademark NEXGARD enjoys a considerable reputation in its field;

iii) the disputed domain name redirected to a website which offered for sale NEXGARD products and contained images of the NEXGARD figurative trademark and products.

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

As regards the use in bad faith, the Panel agrees that <nexgardbrasil.shop> is used in a way that could create a risk of confusion with the Complainant's business. As a matter of fact, the disputed domain name operates a website that promotes the sale of NEXGARD products using the Complainant's figurative trade mark. The Panel agrees that the website to which <nexgardbrasil.shop> redirects could mislead the internet users into thinking that it is, in some way or another, connected to, sponsored by or affiliated with the Complainant and its business.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nexgardbrasil.shop**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2024-08-19

Publish the Decision