

## Decision for dispute CAC-UDRP-107221

Case number **CAC-UDRP-107221**

Time of filing **2025-01-07 09:30:39**

Domain names **nexgardbrasil.live**

### 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 **Jhonatam Rosario**

#### 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 has evidenced to be the owner of various trademark registrations relating to its NEXGARD brand, including, but not limited to, the following:

- word mark NEXGARD, European Union Intellectual Property Office (EUIPO), registration No.: 011855061, filed on 29 May 2013 and registered on 9 October 2013, duly renewed;
- word mark NEXGARD, international registration No. 1166496 registered of 29 May 2013, duly renewed since and claiming a protection in particular in Estonia, Finland, Greece, Israel, Mexico, China, Cyprus, Czech Republic, Spain, Croatia, Portugal, Russian Federation.

Also, the Complainant has substantiated to own and use the domain name <nexgardbrasil.com.br> which resolves to the Complainant's main website for the territory of Brasil, intended to promote the Complainant's NEXGARD products and related services.

The disputed domain name <nexgardbrasil.live> was registered on 5 January 2025.

#### FACTUAL BACKGROUND

The Complainant belongs to the Boehringer Ingelheim Group, a German pharmaceutical company, one of the animal healthcare global leaders. The Complainant mentions 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 <nexgardbrasil.live> was registered on 5 January 2025.

The Complainant filed a complaint on 16 January 2025.

The Complainant states that the disputed domain name <nexgardbrasil.live> 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 an error page, 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.

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#### PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domains name should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

No administratively compliant Response has been filed by the Respondent. It ought to be indicated that the Centre sent the complaint but neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. No other address for correspondence was found on the disputed domain name.

The notice of the Commencement of the administrative proceeding was therefore only sent by e-mail. Yet, the e-mail notice sent to postmaster@nexgardbrasil.live was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notice was also sent to <jhonsr.vsg@gmail.com>, but the CAC never received any proof of delivery or notification of undelivery. No further e-mail addresses could be found on the disputed site.

The Respondent never accessed the online platform.

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#### 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).

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#### 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).

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#### 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).

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## 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.

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## PRINCIPAL REASONS FOR THE DECISION

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

1. that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2. that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. that the disputed domain name was registered and is being used in bad faith.

### A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

The Complainant, Boehringer Ingelheim Animal Health France, is an international leader in the pet and equine markets. The Complainant has provided evidence of ownership of the registrations for the mark "NEXGARD".

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks to which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, *"in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing"*.

The disputed domain name wholly incorporates the Complainant's trademarks "NEXGARD" in addition to the geographic word "brasil". This addition does not prevent a finding of confusing similarity with the Complainant's trademarks. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".live", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent's rights or legitimate interests in the disputed domain name:

1. before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
2. the respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
3. the respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence,

*the complainant is deemed to have satisfied the second element.”*

The Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use, or demonstrable preparations to use, of the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain names, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain.

The Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registration and Use in Bad faith**

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the panel to be present, shall be evidence of the registration and use of the domain name in bad faith:

1. circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holders documented out-of-pocket costs directly related to the domain name; or
2. the Respondent has registered the 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
3. the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
4. by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 your website or location or of a product or service on the Respondent's website or location.

The Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraphs 4(a)(i) and 4(a)(iv) of the Policy.

The Complainant's trademark NEXGARD is so widely well-known and has enjoyed such a long-standing reputation that it is inconceivable that a third party would register any domain name reproducing the mark without prior knowledge.

The Respondent has copied the Complainant's trademark "NEXGARD" and has combined it with a geographic term referring to a country where the Complainant has an activity. Therefore, this registration can only be viewed as an attempt to exploit the goodwill vested in the trademark by attracting Internet users and confusing them to the extent that they would believe that a website or e-mails connected to the disputed domain name offer the services of an entity that is affiliated to the Complainant.

The Respondent, for not responding to the complaint, has failed to demonstrate any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, by passing off, infringement of consumer protection legislation, or infringement of the Complainant's rights under trademark law.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. Please see for instance WIPO Case No. D2000-0003 *Telstra Corporation Limited v. Nuclear Marshmallows* or WIPO Case No. D2000-0400 *CBS Broadcasting, Inc. v. Dennis Toeppen*.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nexgardbrasil.live**: Transferred

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### **PANELLISTS**

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|------|---------------------------|
| Name | <b>David-Irving Tayer</b> |
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DATE OF PANEL DECISION 2025-02-11

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Publish the Decision

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