Decision for dispute CAC-UDRP-100484

Case number	CAC-UDRP-100484
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Domain names	lundbeckdomain.com, lundbeckdomains.com, lundbecknic.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	H. Lundbeck A/S

Complainant representative

Organization	Wallberg IP Advice

Respondent

Organization	Whois Privacy Services Pty Ltd

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the disputed domain names.

IDENTIFICATION OF RIGHTS

Complainant is the owner of the following trademark registrations:

- International trademark n° 845195, dated of April 22, 2004 and covering goods and services in classes 5, 9, 16, 41, 42 and 44;

- International trademark n° 815545, dated of November 19, 2003 and covering goods in class 5.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENTS:

The Complainant H. Lundbeck A/S is an international pharmaceutical company engaged in the research, development, production, marketing and sale of pharmaceuticals across the world. The company's products are targeted at disorders such as depression and anxiety, psychotic disorders, epilepsy and Huntington's, Alzheimer's and Parkinson's diseases. Lundbeck was founded in 1915 by Hans Lundbeck in Copenhagen, Denmark. Today Lundbeck employs approximately 6,000 people worldwide. Lundbeck is one of the world's leading pharmaceutical companies working with brain disorders. In 2011,

the company's revenue was DKK 16.0 billion (approximately EUR 2.2 billion or USD 3.0 billion). For more information, reference is made to the official website www.lundbeck.com.

Lundbeck markets a number of different pharmaceuticals for the treatment of brain disorders. The most recently launched compounds include: Cipralex/Lexapro® (depression), Ebixa® (Alzheimer's disease), Azilect® (Parkinson's disease), Xenazine® (chorea associated with Huntington's disease), Sabril® (epilepsy), Sycrest® (bipolar disorder) and Onfi® (Lennox-Gastaut syndrome).

In addition to being part of the Company name, Lundbeck (fig) ® is a registered trademark that is used as the house mark of the Complainant in connection with the use of the specific brand names. Together with a Complaint, copies of the Complainant´s international registration of Lundbeck (fig) ® under the Madrid-Protocol were presented. The regostration covers inter alia the apparent country of residence of the Respondent, Australia. The Complainant is also established in Australia as shareholder in LUNDBECK AUSTRALIA PTY LTD.

The Complainant has filed an application with ICANN for the .lundbeck gTLD. ICANN published the list of the applications on June 13, 2012 and the contested domain names were registered on June 14, 2012.

Due to the almost simultaneous registration of the contested domain names, the use of the same Registrar, the use of the same Proxy services and the identical use of the domain names the Complainant asserts that the Registrant of the three domain names is in fact the one and the same entity. The three contested domain names can thus be covered by the same Complaint, see UDRP Policy § 4 f.

A. The domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The Complainants registered trademark is a combined mark consisting of the name Lundbeck in stylized letters and a figurative element.

Lundbeck is the only word element in the mark and is a dominant part of the mark and must be regarded as distinctive per se. Since figurative, stylized or design elements in a trademark are generally incapable of being "represented" in a domain name, such elements shall be disregarded for the purpose of assessing identity or confusing similarity under the UDRP. The relevant assessment shall thus be between the alpha-numeric components of the domain name, and the dominant textual component of the mark. Reference is particularly made to the quite similar case: Which? Limited v. Whichcar.com c/o Whois Identity Shield / Vertical Axis, Inc, WIPO Case No.D2008-1637, <whichcar.com>. See Also Dreamstar Cash S.L. v. Brad Klarkson, WIPO Case No.D2007-1943, <gals4free.com>, Nathalie et Jacques ARIGGO, Coutellerie du Petit-Chêne et Heidi-Shop v. M. Gerard Praplan, WIPO Case D 2003-0672 < eidi.com>, Delikomat Betriebsverpflegung Gesellschaft m.b.H v. Mr. Alexander Lehner, WIPO Case D 2001-1447 <delikomat.com> and EFG Bank European Financial Group SA v. Jacob Foundation, WIPO Case D 2000-0036 <efgprivatebank.com et. al>.

The contested domain names are thus confusingly similar to the trademark Lundbeck®, in which the complainant holds rights. The domain names incorporates the complainant´s registered trademark combined with the generic and descriptive terms "domain" & "domains" and the suffix "nic" which in this connection to the best of the Complainants belief is an acronym for "network information center". The Complainant claims that for the purpose of a UDRP proceeding, when a well-known and invented mark is combined with a common noun or adjective, that combination constitutes a domain name which is confusingly similar to an invented and well known mark.

Also, the Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the .com top level domain designation is irrelevant in the comparison of a domain name to a trademark.

B. The Respondent has no rights or legitimate interests in respect of the domain names;
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Respondent has not received any license or consent, expressed or implied, to use the complainant´s trademark Lundbeck®, in a domain name or in any other manner from the Complainant, nor has the Complainant acquiesced in any way to such use or application by the Respondent. At no time did the Respondent have authorization from the Complainant to register the disputed domain names.

Further, to the best knowledge of the Complainant, the Respondent has no legitimate right in the contested domain names. The Respondent did thus not use the domain name as a trademark, company name, business or trade name prior to the registration of the disputed domain name, nor is the Respondent otherwise commonly known in reference to the name.

Also, to the best knowledge of the Complainant, the Respondent has no legitimate interest in the contested domain names. The Respondent does not use the domain names in connection with a bona fide offering of goods and services, nor does the Respondent "make a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue" as stated in § 4 c of the UDRP. On the contrary all the three sites www.lundbeckdomain.com, www.lundbeckdomains.com and www.lundbecknic.com are standard parking sites containing a number of sponsored listings, that generates revenue to the Registrant (see further below).

C. The domain names were registered and are being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant claims that because of the distinctive nature and intensive use of the Complainant´s trademark Lundbeck®, and because of fact that the contested domain names were registered the day after ICANN published the list of applicants for new gTLDs – one of the applicants being the Complainant - the Respondent had positive knowledge as to the existence of the Complainant's trademark at the time the Respondent registered the domain name.

Further, as mentioned above the Respondent uses the domain names to divert Internet traffic to sites that are standard parking sites containing a number of sponsored listings. According to http://www.sedoparking.com/ ,which is the provider for the parking sites:

"Domain Parking is a simple way to earn money from your domains' natural traffic. If you have registered domain names, but they are not currently being used, then domain parking is a great way to put those domains to work, earning you revenue. You can make money without even lifting a finger! The idle domain is used to display relevant advertisements - every time a consumer clicks on one of the advertisements, you earn money,"

By doing this the Complainant claims that Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's websites.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The panel finds that Complainant possesses established legal rights in the term « LUNDBECK » in consideration of its trademark registrations which predate the registration of the disputed domain names.

Said trademark registrations include a figurative element in the shape of a star. It would be irrelevant to take into account the non-dominant figurative element of the trademark registrations insofar it cannot be represented in a domain name which is only composed of alpha-numeric symbols. Previous UDRP decisions held in similar circumstances that ownership of a design plus word mark does not prevent Complainant from defending its rights in a disputed domain name (See, for instance, WIPO Case No.D2008-1637, Which? Limited v. Whichcar.com c/o Whois Identity Shield / Vertical Axis, Inc and WIPO Case No.D2007-1943, Dreamstar Cash S.L. v. Brad Klarkson).

As a consequence, the Panel will only consider the similarity of the domain names to the Complainant´s trademarks taking into account the trademarks' dominant word element "LUNDBECK".

The disputed domain names <lundbeckdomain.com>, <lundbeckdomains.com> and <lundbecknic.com> incorporate the trademark "LUNDBECK" with the mere addition of the generic words "domain", "domains" and the suffix "nic" which commonly refers to "network information center". The mere adjunction of such generic word does not change the overall impression on Complainant's trademark and does not alleviate the risk of confusion (See WIPO Case No.D2003-0696 PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS).

Finally, it has been well established that the mere addition of the extension ".com" is not to be taken into consideration when examining the identity or similarity between Complainant's trademarks and the disputed domain name. It has been held in numerous decisions that the addition of the gTLD suffix does not affect the likelihood of confusion merely because it is necessary for the registration of the domain name itself (WIPO Case n° D2005-0016, Accor v. Noldc Inc., Case n° D2008-0820, Titoni AG v. Runxin Wang, and Case n° D2009-0877, Alstom v. Itete Peru S.A.).

Considering the above-mentioned arguments, it is of the view of the Panel that the three disputed domain names are confusingly similar to Complainant's previous trademarks.

The Panel therefore finds that the first requirement of Paragraph 4(a) of the Policy is satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

Respondents are not affiliated with Complainant in any way and have not been authorized by Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said marks.

In addition, Respondents are not commonly known under the name "LUNDBECK".

Respondents did not demonstrate, before receiving any notice of the dispute, use of, or demonstrable preparations to use, the domain names or a name corresponding to the domain names in connection with a bona fide offering of goods or services. Indeed, the domain names in dispute resolve to standard parking pages.

These submissions constitute a prima facie case. Respondents could have contested these elements, but are in default.

Moreover, Panels have repeatedly stated that when Respondent does not avail himself of his right to respond to Complainant, it can be assumed that Respondent has no rights or legitimate interests in the disputed domain names (WIPO Case n°D2003-0269 Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim, WIPO Case n°D2010-1017 AREVA v. St. James Robyn Limoges).

In these circumstances, the Panel finds that Respondents have no prior rights or legitimate interests in the disputed domain names and that Complainant has met the requirements of Paragraph 4(a)(ii) of the Policy.

BAD FAITH

1. Registration in bad faith

Considering the facts that Lundbeck is a widely-known company and that the registration of the disputed domain names was done the day after the publication of the Lundbeck ICANN application for the gTLD .lundbeck, it is likely that the Registrant knew the existence of the trademark LUNDBECK at the time of the registration. It has been held in previous cases that knowledge of a corresponding mark at the time of the registration of the domain name suggests bad faith (WIPO Case No. D2006-0464, Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam and WIPO Case No. D2000-0270, Document Technologies, Inc. v. International Electronic Communications Inc.).

Consequently, in view of the abovementioned circumstances, it is of the view of the Panel that the domain names were registered in bad faith.

2. Use in bad faith

Respondents use the disputed domain name to direct Internet users to a webpage displaying pay-per-clicks links which are likely to generate revenues. Panels have held that the use of domain names to divert Internet users and to direct them to a webpage providing click through revenues to Respondents evidences bad faith. Indeed, Respondents are taking undue advantage of the Complainant's trademark to generate profits.

The disputed domain names are confusingly similar to Complainant's trademark and previous Panels have ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from Complainant's site to Respondent's site" (WIPO Case No. D2010-1318, L'oreal SA v. , LinChaoJie, Guangxi NanNing IDEA Business Planning Co., Ltd and WIPO Case No. D2006-1095, Edmunds.com, Inc. v. Triple E Holdings Limited).

Consequently, in view of the abovementioned circumstances, it is of the view of the Panel that the domain names were registered in bad faith.

Considering the foregoing, the Panel concludes that Respondents registered and are using the disputed domain names in bad faith and that the requirements of Paragraph 4(a)(iii) of the Policy are satisfied.

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. Complainant has established trademark rights on the sign « LUNDBECK ».

The disputed domain names <lundbeckdomain.com>, <lundbeckdomains.com> and <lundbecknic.com> incorporate the trademark "LUNDBECK" with the mere addition of the generic words "domain", "domains" and the suffix "nic" which commonly refers to "network information center".

The Panel finds that the three disputed domain names are confusingly similar to Complainant's previous trademarks.

2. Respondents are not affiliated with Complainant, nor commonly known under the name "LUNDBECK", and did not demonstrate use of the domain names or a name corresponding to the domain names in connection with a bona fide offering of goods or services. Moreover, Respondents did not file any answer to the Complainant's submissions.

It is therefore the view of the Panel that Respondents have no prior rights or legitimate interests in the disputed domain names.

3. Considering the factual grounds submitted to the Panel, it is likely that Respondent knew the existence of the trademark LUNDBECK at the time of the registration, which is an indication of bad faith regarding the registration of the domain names.

Respondents use the disputed domain name to direct Internet users to a webpage displaying pay-per-clicks links which are likely to generate revenues. As the disputed domain names are confusingly similar to Complainant's trademark, the diversion of Internet traffic from Complainant's site to Respondents' site is likely.

The Panel thus concludes that Respondents registered and are using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LUNDBECKDOMAIN.COM**: Transferred
2. **LUNDBECKDOMAINS.COM**: Transferred
3. **LUNDBECKNIC.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2012-08-27

Publish the Decision