

ADMINISTRATIVE PANEL DECISION

Bayer Intellectual Property GmbH v. Han Lu
Case No. D2023-3254

1. The Parties

Complainant is Bayer Intellectual Property GmbH, Germany, represented by pm.legal, Germany.

Respondent is Han Lu, China.

2. The Domain Name and Registrar

The disputed domain name <levitra-mall.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 28, 2023. On July 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to Complainant on July 28, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 31, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 29, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on September 6, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant is one of the world's leading pharmaceutical companies. Complainant owns registrations in several countries for its LEVITRA trademark, including for example, Malaysian Trademark Registration No. 00006988 registered in International Class 5 on January 2, 2000.¹

The disputed domain name was registered February 7, 2022 and currently resolves to an inactive webpage. However, as discussed below, Complainant provides evidence that shows Respondent's use of the disputed domain name for an active website as recently as June 2023. According to the evidence submitted, at that time and at other earlier dates, the disputed domain name resolved to a website displaying Complainant's registered trademark and logo. The website purported to offer Complainant's LEVITRA products for sale. The website also displayed a photograph of a building bearing the Bayer group's logo, with the address of one of their facilities in Berkeley, California.

5. Parties' Contentions

A. Complainant

Complainant alleges that the LEVITRA trademark for its erectile dysfunction prescription medicine is well-known and that the product was first sold under the LEVITRA brand in Germany in March 2003. Complainant avers that its product is sold in the United Kingdom, Ireland, the U.S., Austria, Norway, Spain, France, Brazil, Germany, Italy, New Zealand, Portugal, Australia, Mexico, Republic of Korea, Kuwait, Taiwan, China, Hong Kong, and Israel.

Complainant avers that the website to which the disputed domain name resolves copies Complainant's trademark and also Complainant's registered flame logo, which is used for sales of LEVITRA. Complainant further alleges that the website falsely represents that it is operated by Complainant, displaying a photograph of Complainant's U.S. Bayer Healthcare building, and offering genuine products of Complainant, while in fact, the website promotes counterfeit and unauthorized products.²

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On this basis, Complainant seeks transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

For Complainant to prevail under the Policy, it must be established that (1) the disputed domain name is identical or confusingly similar to Complainant's LEVITRA trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith. Policy, paragraph 4(a).

¹Complainant also annexes to the Complaint information pertaining to its United States of America ("U.S.") Trademark Registration No. 3050814, registered on January 24, 2006. Complainant is not listed as owner of the U.S. registration, however, it appears that the owner is another member of the Bayer group of companies, Bayer Aktiengesellschaft.

² Complainant provides screen captures of pages from the website to which the disputed domain name resolved.

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant’s allegation that the disputed domain name is confusingly similar to Complainant’s LEVITRA mark.

UDRP panels commonly disregard Top-Level Domains (“TLDs”) in determining whether a disputed domain name is identical or similar to a complainant’s marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the “.com” TLD from the disputed domain name, the Panel notes that Complainant’s entire LEVITRA mark is included in the disputed domain name, adding only a hyphen and the word “mall.” The Panel finds that these additions to Complainant’s mark do not prevent a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar); [WIPO Overview 3.0](#), section 1.8 (“Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”).

The Panel therefore concludes that the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. See *id.*

Complainant has provided credible evidence demonstrating that the website to which the disputed domain name routes displays Complainant’s LEVITRA trademark and logo. The Panel accepts the Complaint’s undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant’s trademarks in the disputed domain name, or to display Complainant’s trademarked logo. The Panel also accepts Complainant’s averment that Respondent is not commonly known by the disputed domain name, and the Panel so finds.

In the absence of a reply from Respondent, the Panel further accepts Complainant’s undisputed allegations that the products offered on the website are counterfeit or are not the genuine prescription products of Complainant. Since Respondent’s website does not route Internet users to authorized products associated with the LEVITRA marks, the Panel concludes that there is no *bona fide* use.³

³ Even if the products offered via the website to which the disputed domain name routes were *genuine* products of Complainant, the website at the disputed domain name would not qualify for fair use since the website misleads Internet users by failing to disclose its

Respondent has refrained from opposing the evidence of fraud, impersonation and illegal copying provided by Complainant, and the Panel finds that the disputed domain name has been used for such illegal activities. UDRP Panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests in a respondent. *E.g.*, [WIPO Overview 3.0](#), sections 2.13.1 and 2.13.2.

In light of the evidence and allegations submitted by Complainant, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that Complainant establishes a *prima facie* case. Respondent has not opposed or rebutted that *prima facie* case. The Panel also holds that Respondent lacks rights or legitimate interests in the disputed domain name on the grounds that Respondent's use of the disputed domain name falsely suggests that Respondent is affiliated with Complainant, the trademark owner. [WIPO Overview 3.0](#), section 2.5.

Therefore, the second element of Policy paragraph 4(a) is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith. Policy, paragraph 4(b)(iv). See, *e.g.*, *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#).

The record shows that Respondent registered the disputed domain name long after Complainant perfected and registered its trademark rights. The composition of the disputed domain name and its use to direct Internet users to a website designed to falsely represent Complainant's online operations make obvious that Respondent knew the nature of Complainant's business associated with its trademarks and targeted Complainant.

The Panel finds that Respondent deliberately attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with Complainant's marks. This is evidence of bad faith registration and bad faith use. Policy paragraph 4(b)(iv).

Complainant has also submitted evidence that Respondent implicitly misrepresents its website as related to Complainant's operations, in part by wholly incorporating the LEVITRA trademark in the disputed domain name, by copying Complainant's registered logo, and by displaying a photograph of Complainant's U.S. Bayer Healthcare building. From this, the Panel infers that Respondent also registered the disputed domain name to sell products in competition with Complainant and to disrupt Complainant's business. This also supports a finding of bad faith under Policy paragraph 4(b)(iii).

Respondent's failure to submit a response to the Complaint and the failure to provide accurate contact details as required by the Registrar are further evidence of use in bad faith.⁴ The current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3; *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel holds therefore that Respondent registered and is using the disputed domain name in bad faith, thus, establishing the third element under paragraph 4(a) of the Policy.

lack of a relationship with Complainant, the trademark owner. *E.g.*, *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), sections 2.5 & 2.8.

⁴Written notification of the Complaint by courier was not possible using the registrant address details provided by Respondent.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <levitra-mall.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: September 13, 2023