

ADMINISTRATIVE PANEL DECISION

Pharma Mar, S.A. v. Roy Lotte
Case No. D2023-4761

1. The Parties

The Complainant is Pharma Mar, S.A., Spain, represented by Ubilibet, Spain.

The Respondent is Roy Lotte, Spain.

2. The Domain Names and Registrar

The disputed domain names <lurexvie.com> and <zepzelca.com> are registered with Dynadot Inc Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 the Respondent of the Complaint, and the proceedings commenced on November 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 11, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on December 18, 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

The Complainant is a pharmaceutical company dedicated to the research, development, and commercialization of innovative oncology treatments with a focus on precision medicine and targeted therapies. The Complainant commercializes its products under various brands, including ZEPZELCA, YONDELIS, APLIDIN, or LUREXVIE.

The Complainant owns various trademark registrations for its brands, including the European Trademark Registration No. 018214106, ZEPZELCA (word), applied for on March 24, 2020 and registered on July 7, 2020, in class 5; and the European Trademark Registration No. 018214107, LUREXVIE (word), applied for on March 24, 2020 and registered on July 7, 2020, in class 5.

The Complainant further owns various domain names, including <pharmamar.com> (registered on June 7, 1998), which resolves to its corporate website.

The disputed domain names were registered on March 24, 2020.

The disputed domain name <lurexvie.com> (“First Disputed Domain Name”) is apparently inactive resolving to an Internet browser error message.

The disputed domain name <zepzelca.com> (“Second Disputed Domain Name”) resolves to a website, in English language, that provides information about ZEPZELCA treatments, and indicates, “This site is intended for US residents only”. This website provides prescribing and safety information for healthcare professionals regarding ZEPZELCA pharmaceutical treatments. It contains, at its heading, the term “ZEPZELCA” followed by the registration symbol ® and the phrase “(lurbenectidin) for injection 4mg”, and, at its footer, the phrase “ZEPZELCA is a registered trademark of PharmaMar, S.A. used by Jazz Pharmaceuticals under license”. The bottom of this website further includes the logos and the brands for Jazz Pharmaceuticals and for the Complainant, including links to the corporate website of Jazz Pharmaceuticals. The copyright note indicates “©2022 Jazz Pharmaceuticals US-LUR-2200101 Rev0422”. The “Contact Us”, “Terms of Use” and “Privacy Statement” of this website are referred or linked to Jazz Pharmaceuticals and its corporate website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are identical to its registered trademarks ZEPZELCA and LUREXVIE, and they were registered by the Respondent with no rights or legitimate interests. The disputed domain names have always resolved to websites displaying the Complainant’s products, and there is no other commercial or noncommercial activities, different from the ones conducted by the Complainant, under the disputed domain names. The Respondent is a former employee and/or collaborator of the Complainant’s domain names portfolio management company, and, therefore, the registration and maintenance of the disputed domain names by the Respondent is improper and malicious, giving rise to a factual situation of misappropriation.

The disputed domain names were erroneously or unlawfully registered under the Respondent’s name at the same time as the Complainant’s trademarks were registered, as part of a comprehensive brand protection strategy. The Respondent agreed at that time to transfer the disputed domain names to the Complainant, but has not taken the necessary actions to carry out such transfer. The Respondent is obstructing the Complainant from asserting ownership and control over the disputed domain names, and this conduct constitutes a pattern of bad faith, as the same behavior concerns two domain names of the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, namely the ZEPZELCA and the LUREXVIE marks. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of these marks are reproduced within the disputed domain names. Accordingly, the disputed domain names are identical to the ZEPZELCA mark or the LUREXVIE mark, respectively, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Second and Third Elements: Rights or Legitimate Interests, Registered and Used in Bad Faith

The Panel considers appropriate to analyze the second and third elements together in this case.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's prima facie showing, has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names, such as those enumerated in the Policy or otherwise, and has not rebutted the Complainant's allegations of bad faith.

The Panel notes, however, that, according to the Complainant's allegations, the disputed domain names were registered as part of a comprehensive brand protection strategy, at the same time the registration of its trademarks were applied for. The Complainant alleges that the Respondent worked for or collaborated with a company that acted on behalf of the Complainant in the registration of the disputed domain names, and indicates that the Respondent has not complied with its compromise to transfer the disputed domain names to the Complainant.

The Panel considers that these allegations imply the existence of any type of agreement between the parties, and/or between the parties and the Respondent's company, that covered the registration of the disputed domain names as part of the indicated brand strategy of protection. Albeit, the Panel notes that the Complainant has not provided any evidence in support of these allegations, not providing a copy of any contract, correspondence or any other evidence, which, according to these allegations, should be in the possession of the Complainant.

The Panel presumes that if there was evidence that the Respondent was prohibited from registering the disputed domain names in its own personal name, or that they should have been registered in the name of the Complainant, this would have been provided. That it is not, tells the Panel that it is at least an open question.

Likewise, the Panel notes that the Complainant has not provided any evidence of any previous correspondence with the Respondent and/or its company regarding the registration and/or the request of the transfer of the disputed domain names in its favor.

The Panel further notes that the First Disputed Domain Name is apparently inactive, however, the Second Disputed Domain Name resolves to a website that acknowledges the Complainant's ownership of the ZEPZELCA mark, and indicates that the site belongs to the licensee of this trademark for the United States of America ("United States"), the company Jazz Pharmaceuticals. The Panel finds that the general appearance and content of this website seems legitimate. Additionally, the Panel, under its general powers, articulated *inter alia* in paragraph 10 of the Rules, has corroborated that the corporate website of the company Jazz Pharmaceuticals also includes the ZEPZELCA treatments among the medicines this company commercializes within the United States.

All these circumstances indicate, in balance of probabilities, to the Panel, that the disputed domain names may have been registered, either on behalf of the Complainant or on behalf of its licensee for the United States, as part of a global protection strategy and within the scope of any type of agreement (license or other type), which may have covered the registration of the disputed domain names by the Respondent.

These circumstances clearly exceed the scope of the UDRP Policy, which was conceived for a very narrow scope of "cybersquatting" cases, in which both the registration and the use of a domain name are done in bad faith, without the coverage of any agreement between the parties. A precise analysis of this case would also exceed the limited tools of the UDRP proceedings, which do not have the comprehensive evidence proceeding options available in other court or ADR proceedings.

Panels have tended to deny the case not on the UDRP merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited "cybersquatting" scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction. [WIPO Overview 3.0](#), section 4.14.6.

The Panel finds this is the case here, as this case exceeds the scope of the Policy and should be addressed before a court of a competent jurisdiction. This should not be understood as an approval of the Respondent's actions, but simply as an "out of scope" decision.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: December 27, 2023