

ADMINISTRATIVE PANEL DECISION

H. Lundbeck A/S v. lawn john, Digital affiliate marketing
Case No. D2024-0080

1. The Parties

The Complainant is H. Lundbeck A/S, Denmark, represented by Zacco Denmark A/S, Denmark.

The Respondent is lawn john, Digital affiliate marketing, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <lexapro.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2024. On January 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 12, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on January 15, 2024.

The Center verified that the Complaint together with the amendment to 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 January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 9, 2024.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on February 14, 2024. 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 following facts are undisputed.

The Complainant was founded in 1915 and is now 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 the disease areas within psychiatry and neurology. The Complainant is one of the world's leading pharmaceutical companies working with brain disorders. In 2022, the company's revenue was USD 1.71 billion. Today the Complainant employs approximately 5,400 people worldwide.

The Complainant markets a number of different pharmaceuticals for the treatment of brain disorders. The most recently launched compounds include: Rexulti (depression and schizophrenia), Brintellix (depression) and Abilify Maintena (schizophrenia).

The LEXAPRO trademark is being used for an antidepressant, and the mark is registered in more than 100 countries around the world, including the international registration for the word mark LEXAPRO, with registration number 778106 and registration date March 16, 2012, for goods in class 5.

The Complainant also holds several domain name registrations that contain the LEXAPRO trademark including <lexapro.com>.

The disputed domain name, registered on July 18, 2023, is used for a website that promotes "cracked" software for an Ableton music product.

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 name.

Notably, the Complainant contends that the Complainant's trademark is a highly distinctive trademark that is registered in more than 100 countries around the world. Because of the distinctive nature and intensive use of the Complainant's trademark, the Respondent must have had positive knowledge as to the existence of the Complainant's trademark at the time the Respondent registered the disputed domain name.

The disputed domain name is being used for a website that promotes a performance software named "Ableton Live Crack For Windows". The holder of the Ableton trademark is Ableton AG which according to Wikipedia "is a German music software company that produces and distributes the production and performance program Ableton Live and a collection of related instruments and sample libraries, as well as their own hardware controller Ableton Push. Ableton's office is located in the Prenzlauer Berg district of Berlin, Germany, with a second office in Pasadena, California". Since the Respondent is using a privacy service it is not immediately possible to determine the real identity of the Respondent but regardless of whether the Respondent is Ableton AG or an unidentifiable third party due to the distinctive nature and intensive use of the Complainant's trademark it is immediately inconceivable that the Respondent will be able to use the disputed domain name for any plausible purpose that would not be infringing the Complainant's rights. Furthermore, the fact that the Respondent is concealing its identity behind a privacy shield is in itself an indication of bad faith.

B. Respondent

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

6. Discussion and Findings

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark 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. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

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 name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel finds that on a balance, and certainly lacking a response from the Respondent, that it is implausible that the Respondent was not aware of the Complainant's trademark when registering the disputed domain name which is identical to that unique mark and calls for an explanation.

The use of the disputed domain name containing the well-known LEXAPRO trademark in its entirety in connection with a website offering illegal access to software is also an indication of the Respondent's bad faith, within the totality of the circumstances in this case, which also includes that the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the Respondent's concealing its identity.

The Panel finds that the Complainant has established the third element of the Policy.

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 <lexapro.store> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: February 23, 2024