



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Bayer Aktiengesellschaft v. Henrik Monssen

Case No. D2003-0275

1. The Parties

The Complainant is Bayer Aktiengesellschaft, 51368 Leverkusen-Bayerwerk, Germany, represented by Brinks Hofer Gilson & Lione of United States of America.

The Respondent is Henrik Monssen of Blumenau, Brazil.

2. The Domain Name and Registrar

The disputed domain name <allaboutlevitra.com> is registered with Go Daddy Software Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 9, 2003. On April 10, 2003, the Center transmitted by email to Go Daddy Software a request for registrar verification in connection with the domain name at issue. On April 10, 2003, Go Daddy Software transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 15, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was May 5, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 6, 2003.

The Center appointed Peter G. Nitter, Peter L. Michaelson and Manoel J. Pereira Dos Santos as panelists in this matter on May 16, 2003. The Panel finds that it was properly constituted. Each member of 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

Levitra is a pharmaceutical preparation developed by Complainant. The preparation is intended for use primarily in the treatment of male sexual dysfunction. Levitra is an invented term that Complainant has registered in jurisdictions throughout the world. These registrations include USA, United Kingdom and Germany. Complainant began filing Levitra trademark applications worldwide in January 2000. The U.S trademark application was published July 2, 2002. Reference is made to annexes 5-9 to the Complaint.

The Levitra trademark has been promoted by Complainant and through its marketing partner GlaxoSmithKline, in connection with quality pharmaceutical products. The mark was presented in public by Complainant at least as early as September 23, 2002, at the 10th World Congress of the International Society for Sexual and Impotence Research in Montreal Canada with a broad media coverage.

Despite widespread promotion, Levitra products were first made available to consumers in European markets in March 2003, due to lengthy governmental approval requirements for prescription of drugs.

Several articles, published in the period from September 23, 2002, and until recently, have described the Levitra products, and reference is made to annexes 10-12 of the Complaint.

Complainant has established a website on “www.levitra.com”, which is used to promote the Levitra trademark and provide consumers with accurate and informative resources regarding Complainant’s Levitra products.

5. Parties’ Contentions

A. Complainant

Identical or Confusingly Similar

The domain name <allaboutlevitra.com> is confusingly similar to the Levitra trademark.

When a respondent merely adds descriptive terms to an otherwise distinctive and well known trademark, the domain name is considered confusingly similar to the trademark.

Adding a descriptive phrase such as “all about” to the distinctive Levitra trademark results in a confusingly similar domain name. Reference is made to several decisions, including *Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253, in which the domain name <quixtarmortgage.com> was found to be legally identical to Quixtar trademark, and that addition of generic terms has, little if any, affect on a determination of legal identity. Reference is also made to WIPO Case No. D2002-

0363, in which the domain name <dellaboutus.com> was found confusingly similar to the Dell trademark.

Rights or Legitimate Interests

Respondent has no rights or legitimate interests in the domain name <allaboutlevitra.com>. There is no relationship between Respondent and Complainant that would give rise to any license, permission, or authorization by which Respondent could own or use the domain name.

The domain name <allaboutlevitra.com> is currently inactive. The domain name is consequently not used in connection with a bona fide offering of goods or services. There is no evidence that Respondent has made demonstrable preparations to use the domain name in connection with a use as mentioned. Respondent has not denied this in the correspondence.

Respondent can not establish that he has been commonly known as <allaboutlevitra.com> or “Levitra”, because Levitra is an invented word by Complainant. Respondent does not claim any personal affiliation with the mark.

The Respondent can not establish that he is making a legitimate noncommercial or fair use of the domain name. The domain name does not link to any content what so ever. Reference is made to *Pfizer Inc. v. Internet Gambiano Productions LLC*, WIPO Case No. D2002-0325 where no rights or legitimate interests were found when the domain name <www-viagra.com> was inactive.

Respondent can not show any of the circumstances set forth in paragraph 4(c) of the Policy that demonstrate Respondent’s rights or legitimate interests in the domain name. Therefore the Complainant submits that Respondent has no rights or legitimate interests in the domain name <allaboutlevitra.com>.

Registration and Use in Bad Faith

The use requirement of the Policy has been liberally construed. A complainant can satisfy the “use” requirement even in situations where a domain name is arguably inactive. Reference is made to several decisions regarding this matter, including WIPO Case No. D2002-0366 which refers to many bad faith passive holding decisions.

A consumer who encounters any website accessed via Respondent’s <allaboutlevitra.com> domain name will be likely to be confused as to the source, sponsorship, or approval of the content. Reference is made to *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366 in which the panel held that although the inactive domain name <tryviagra.com> was passively held, confusion was likely.

Confusion is particularly insidious in the present case because Levitra is a prescription drug. Consumers relying on any materials or advice accessible via <allaboutlevitra.com> believing it was approved by Complainant, could be endangering their health.

Respondent has owned the <allaboutlevitra.com> domain name registration since December 3, 2002, without placing any content on a corresponding website. The Complainant seems to allege that one on this basis must conclude that the domain name was registered for the primary purpose of at some stage extracting a profit from the

Complainant. Reference is made to *Telstra Corporation Limited v. Peter Yellowlees*, WIPO Case No. D2002-0638.

Respondent has disrupted Complainant's business activities by frustrating its ability to place content about Levitra at a website accessible via <allaboutlevitra.com>.

Respondent has prevented Complainant from reflecting its Levitra mark in the <allaboutlevitra.com> domain name.

There is no doubt that Respondent had knowledge of Complainant's prior rights in the trademark Levitra at the time of registration, December 3, 2002. Complainant publicly announced its Levitra trademark at least as early as September 23, 2002, with broad media coverage.

The Respondent is in breach of his domain name agreement with the Registrar, Go Daddy Software Inc. for two reasons. Firstly, Respondent had knowledge about Complainant's rights. Secondly, false contact information was provided to the Registrar. This is further evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The domain name is <allaboutlevitra.com>.

"Levitra" is the registered trademark of the Complainant.

The trademark is registered in a large number of jurisdictions around the world.

The domain name consists of the trademark of the Complainant to which the general phrase "all about" is added as a prefix. The ability of this general phrase, "all about", to distinguish the domain name from the trademark of the Complainant is limited. The phrase "all about" is a descriptive addition. The trademark Levitra is distinctive, as the word Levitra does not have a meaning, but is an invented term by the Complainant.

Reference is made to the following decisions, which are particularly relevant: *Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253 (domain name <quixtarmortgage.com> is "legally identical" to QUIXTAR trademark), *Dell Computer Corporation .v. MTO C.A. and Diabetes Education Long Life*, WIPO Case No. D2002-0363 (domain name <dellaboutus.com> confusingly similar to DELL trademark.) and *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366 (domain name <tryviagra.com> sufficient similar to the VIAGRA mark).

The domain name <allaboutlevitra.com> is thus found to be confusingly similar to the trademark "Levitra" in which the Complainant has rights.

B. Rights or Legitimate Interests

Complainant has not licensed or otherwise permitted Respondent to use its trademark or to apply for any domain name incorporating any such mark.

The domain name is currently inactive, and thus not used in connection with a bona fide offering of goods or services. There is no evidence that the Respondent has made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services. The Respondent is not commonly known by the domain name.

The Respondent has merely held the contested domain name passively. The Respondent's website is not operational and the Panel infers that it never has been. There is no evidence before the Panel in this case that the Respondent has any legitimate interest in the domain name <allaboutlevitra.com> for the purposes of paragraph 4(c) of the Policy. Reference is made to *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366.

The inclusion of the general phrase "all about" in the domain name does not create a legitimate interest.

The panel draws the inference from the Respondent's failure to respond to this administrative proceeding, that the Complainant is correct in its assertion that the Respondent has no rights or legitimate interests in the domain name.

C. Registered and Used in Bad Faith

It can not reasonably be argued that the Respondent could have been unaware of the trademark when registering the domain name. Firstly, "Levitra" is an invented word by Complainant. Secondly, Respondent's reference to Viagra in the correspondence implies that he was aware that Levitra was a trademark used in connection with a drug to treat sexual dysfunction.

Since the Respondent has formed the domain name <allaboutlevitra.com> by only adding "all about" to the registered mark "Levitra", one can infer that the Respondent's motivation was to exploit user confusion as to source, sponsorship, affiliation or endorsement of any "Levitra" branded product.

The Respondent has owned the domain name registration since December 3, 2002, approximately for 6 months, without using it by creating a web-site, but continues to retain it. Several panels have held that, under appropriate circumstances, passive holding evidences bad faith use. Reference is made to *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366 and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

The furnishing of false contact information to the Registrar also supports a finding of bad faith. Reference is made to *Playboy Enterprises International, Inc. v. Federico Concas, a.k.a John Smith, a.k.a. Orf3vsa*, WIPO Case No. D2001-0745.

The Panel concludes that the Complainant has established this element.

7. Decision

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

Peter G. Nitter
Presiding Panelist

Peter L. Michaelson
Panelist

Manoel J. Pereira Dos Santos
Panelist

Dated: May 30, 2003