Panel Decision for dispute CAC-ADREU-006947

Case number	CAC-ADREU-006947
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Domain names	cialishapi.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Eli Lilly and Company

Respondent

Organization	s?raselviler numra 43

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings of which the Panel is aware that are pending or decided related to the disputed domain name

FACTUAL BACKGROUND

The Complainant is Eli Lilly and Company which is a company registered in the United States of America. Eli Lilly is the trademark owner of several CIALIS trademarks in USA and abroad, including the trademark registration for CIALIS before the Turkish Patent Institute (trademark nº99020073, registered 22 September 2000). The Respondent registered the disputed Domain Name on 6 August 2014. At same time, the Complainant is also owner of the domain name cialis.com.

A. COMPLAINANT

Complainant seeks a decision transferring the disputed domain name to the same Complainant. This is based on its previous registered trade mark and domain name. According to the Complainant the disputed domain name comprises of it´s a worldwide very well known trade mark CIALIS (registered by the Complainant) with a generic word adedd - "hapi" - meaning medication, drug in Turkish. Furthermore, the Complainant claims the Respondent has no right or legitimate interests in respect of the disputed domain name as he is not known currently under cialis name and is not making a legitimate non-commercial use of the domain name. When an internet user types this domain name they are directed to another web site linked to another domain name offering counterfeited and illegal versions of the Complainant drug, including cialis brand pharmaceutical product. The Respondent is not authorized by the Complainant to use the CIALIS trademark. Finally, this use is described as being in bad faith as the only goal would be employing a very well known trademark to attract internet users to a website for commercial gain.

B. RESPONDENT

The Respondent filed neither a Response nor any other submission regarding the Complaint.

DISCUSSION AND FINDINGS

1-Before entering in the discussion under the framework provided by Article 4. 2 (b) of Regulation (EC) 733/2002, articles 10.1, 21.1.2.3. 22. 11 of (EC) Regulation nº 874/2004 (PPR), and according to Article 11 of the ADR rules, because there are some important issues in this case, we would like to analyse briefly and previously four points:

1- According to Art 22 (1) PPR and Paragraph b 1 (a) of the ADR Rules, any person or entity can start an ADR proceeding. However non-EU- entities cannot request a transfer of the domain name, but only a revocation. As the Complainant is an US company they cannot ask for a domain name transfer;

2- The Respondent did not file any submission in this procedure. According to Paragraph B.10 (a) of the ADR rules, we can proceed to a decision based on the complaint and may consider the failure to comply as grounds to accept the claims of the other party. But as paragraph B.11 (d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of article 21 (1) of the Regulation are satisfied;

3- Practically all the arguments presented by the Complainant are based on WIPO decisions. We will base our decision on the ADR rules and practice. This does not mean we cannot consider other decisions mainly under UDRP terms. However, we must acknowledge hierarchy of rules and our main scope is to use ADR rules and related case law;

4- In the final part of its complaint the complainant made some references to the potential harm this domain name as being used, e.g. linked with a web site offering counterfeited drugs, could create on the health of many unsuspecting consumers. These consumers may have purchased unlawfully on the web site being accessed through this domain name. Despite these reasons, under the notion of public health, can surely be very important, we think our scope is limited and directed to the discussion of precise rules and practice related to a concrete domain name and no more.

5-Entering now in the main questions we must discuss and decide here. The first issue is to decide the substantiation of earlier rights and comparison of signs (Article 21.1 of PPR). One time proved that the Complainant trademark was registered earlier than the disputed domain name. We must now seek if the disputed domain name is confusingly similar to the trade mark of the Complainant. In other terms, if this generic expression "hapi" is modifying the sign in order to let us conclude that there is no (confusingly) similarity here. It is clear under previous ADR .EU case law that domain names which include a name for which a right is recognized or established by national and/or EU law combined with descriptive or generic terms are confusingly similar to that name, especially in a situation where the descriptive or generic terms describe the goods and/or services or the right holder (Avery Dennison Corporation v. Dotasterisk Ltd, CAC 5376; Monster Finance Limited v. Monster Worldwide Ireland Limited 5376; Synergis v. Olympiakos 4218). It is true that CIALIS is a very well known trade mark worldwide and the Complainant has provided enough materials evidencing this. It is a distinctive trademark consisting of an "invented" word. The generic word "hapi" does not preclude the distinctiveness of the mark. For a normal reader or user CIALIS is the first sign he watches or already knows. Finally, as hapi means medication or drug in Turkish this does not change our opinion. For a Turkish reader or user the similarity is even increased. The web site being accessed through the domain name is in Turkish.

6-Concerning the legitimate interests of the Respondent over the disputed domain name, we do not have any information from the Respondent. However, the Respondent is using a trademark without authorization, first on a domain name and then on a web site dedicated to sell drugs, counterfeited drugs, it seems. Furthermore, the Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. Therefore, it is clear that the domain name holder has not a legitimate interest on the domain name under the terms of article 21 c) of the quoted Regulation (PPR).

7- Finally, despite the silence of the Respondent it is clear from the facts that the disputed domain name was registered and is being used in bad faith. In fact, the domain name is being used to intentionally attract Internet users for a web site selling CIALIS drugs, or counterfeited ones, for commercial gain, creating a likelihood of confusion with the very well known trade mark.

The Panel finds that the disputed domain name is confusing similar to trade mark in respect of which a right is established for the Complainant and that it has been registered by the Respondent without rights or legitimate interest and being used in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name CIALISHAPI be revoked

PANELISTS

Name	**Manuel Lopes Rocha**

DATE OF PANEL DECISION 2015-07-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: CIALISHAPI

II. Country of the Complainant: United States of America, country of the Respondent: unknown

III. Date of registration of the domain name: 6 August 2014

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

word trademark registered in Turkey, reg. No. 99020073 in respect of goods and services in classes 5
V. Response submitted: No

VI. Domain name is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Use without authorization of the trade mark owner and an illegitimate commercial use of the domain name with the intent to mislead consumers.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Domain name is being used to attract Internet users for commercial gain trough a link to another website selling drugs under the brand name of the Complainant.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: Respondent did not file any answer or any other submission concerning the Complaint.