

## **ADMINISTRATIVE PANEL DECISION**

Futura Medical Developments Limited v. Roman Vyrski  
Case No. D2024-3680

### **1. The Parties**

The Complainant is Futura Medical Developments Limited, United Kingdom, represented by Stephenson Harwood, United Kingdom.

The Respondent is Roman Vyrski, Belarus, represented by Dr. Daniel Dimov, Belgium.

### **2. The Domain Name and Registrar**

The disputed domain name <erixonin.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 11, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 amended Complaint on September 12, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on September 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2024. The Response was filed with the Center on October 2, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on October 8, 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 Complainant specializes in the development and global commercialization of sexual health products. One of its products is Eroxon, an over-the-counter topical gel for the treatment of erectile dysfunction in men. In the course of its clinical trials, the product was referred to with the codename “MED3000”. In 2023, Eroxon received marketing authorizations in the United States, the European Union, the United Kingdom, and other countries in the Middle East and Latin America.

The Complainant is the owner of the following trademark registrations for the sign “EROXON” (the “EROXON trademark”):

- the United States trademark EROXON with registration No. 5410070, registered on February 27, 2018, for pharmaceutical products in the form of gels and creams for the treatment of sexual dysfunction in International Class 5; and
- the United Kingdom trademark EROXON with registration No. UK00003958678, registered on December 15, 2023, for goods in International Class 10, including for medical devices for topical use in the treatment of sexual dysfunction.

The Complainant is also the owner of the domain name <eroxon.com> registered on February 12, 2003, which resolves to its official website for Eroxon.

The Respondent does not provide any information about itself, its activities and the products that it offers for sale. The only information in this regard is the information published on the website at the disputed domain name.

The disputed domain name was registered on January 17, 2024. It resolves to an English language website with the header “*Eroxonin MED3000™ (Eroxon analogue) Stimulating Gel for Men*”, which offers for sale the product “*Eroxonin Stimulating Gel for Men – Male Massage Cream Helps Restore Your Confidence 1.75 FL OZ*” in three variations. The website at the disputed domain name and the documents available there do not contain any information about the location of the Respondent and its production facilities or about any marketing authorizations issued in respect of the products offered for sale on the Respondent’s website.

The Respondent submits that it is affiliated to the applicant of the United States trademark application for “EROXONIN MED3000” with US Serial No. 98211925, filed on October 6, 2023 for goods in International Class 5, including for a massage cream for enhancing sexual arousal, by a person with an address in Belarus. According to the information for this trademark application available on the website of the United States Patent and Trademark Office (“USPTO”), “*the mark consists of a C-like arc with a drop inside, next to the wording “EROXONIN MED3000” in stylized font*”. On August 23, 2024, the Complainant filed an opposition against this trademark application on the basis of its EROXON trademark, and opposition proceedings are currently pending before the Trademark Trial and Appeal Board (“TTAB”) of the USPTO.

#### **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.

The Complainant states that the disputed domain name is confusingly similar to its EROXON trademark, because the trademark is reproduced in its entirety in the disputed domain name, and the addition of the letters "in" after the trademark does not eliminate the confusing similarity with the EROXON trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it uses it to impersonate the Complainant or to suggest an endorsement by the Complainant of the Respondent's product Eroxonin MED3000. The Complainant submits that the Respondent attempts to attract customers to the website at the disputed domain name by using branding highly similar to the EROXON trademark for a product that is identical or very similar to the Complainant's Eroxon product. The Complainant adds that its Eroxon product was referred to as MED3000 during its clinical trials and that the adoption by the Respondent of the element "MED 3000" as part of its EROXONIN MED3000 brand is also made to increase the association between this brand and the Complainant's EROXON trademark and to misleadingly divert consumers for commercial gain.

The Complainant maintains that the EROXONIN MED3000 trademark application was filed in an attempt to circumvent the application of the UDRP or otherwise prevent the Complainant's exercise of its rights, such as with the objective of using this trademark application to prevent the Complainant from successfully seeking to remove the Respondent's product from third party marketplace.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It states that the EROXON trademark predates the registration of the disputed domain name, which was registered primarily for the purpose of disrupting the business of a competitor, i.e., the Complainant. According to the Complainant, through the registration and use of the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the EROXON trademark as to the source, sponsorship, affiliation or enforcement of the website at the disputed domain name and of the Eroxonin MED3000 product.

According to the Complainant, the Respondent was, prior to the registration of the disputed domain name, aware of the Complainant's EROXON trademark and Eroxon product, and the adoption by the Respondent of the brand Eroxonin MED3000 is an attempt by the Respondent or an affiliate to copy the Complainant's earlier EROXON brand and product.

The Complainant highlights that the EROXON trademark appears on publicly accessible registers including the United States Patent and Trademark Register, and simple searches via search engines return hits for the clinical trials for the Eroxon product under the codename MED3000. The Complainant submits that there is no legitimate reason for the Respondent to register the disputed domain name which contains the earlier EROXON trademark in its entirety and which is used to host a website on which the Eroxonin MED3000 product is offered for sale using the Complainant's clinical trial name MED3000 and mimicking the stylization and get-up used to market the Eroxon product.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

According to the Respondent, there is a major difference between the term "Eroxonin" and the EROXON trademark. It states that the term "Eroxonin" includes the element "in" which is missing in the EROXON trademark and gives distinctiveness to "Eroxonin", that the "in" element is placed at the end of "Eroxonin", and that the last element usually has more importance when assessing confusing similarity than the middle element. In the Respondent's submission, the average consumer would certainly notice the element "in" at the end of "Eroxonin" and would, as a result, be able to distinguish the compared terms. The Respondent adds that "Eroxonin" is visually much longer than EROXON trademark, and the letters "nin" in the end of it distinguish it from the trademark.

The Respondent further states that the Complainant mentions some random similarities, such as the fact that the Respondent's EROXONIN trademark as used in commerce may have some blue elements, but omits to mention the many differences between the two trademarks, such as that the Respondent's EROXONIN trademark includes the symbol "C" and an orange dot inside, and that other versions of the Respondent's trademark include orange letters, while the Complainant's EROXON trademark does not include any letters in this color.

The Respondent explains that the United States trademark application EROXONIN MED3000 is owned by a third party which is related to the Respondent and has submitted a reply to the opposition filed by the Complainant, and the parties to this proceeding are currently in the process of complex and possibly lengthy trademark proceedings with unclear outcome before the TTAB of the USPTO.

According to the Respondent, the above means that the current dispute is a complex trademark dispute involving various parties, for which the Policy is not supposed to be used. The issue of whether the Complainant has earlier trademarks rights preceding the trademark application for EROXONIN MED3000 should be decided by the TTAB. During the TTAB proceedings, the applicant of the trademark application for EROXONIN MED3000 may provide valuable evidence which may result in the rejection of the opposition. If this happens, but the Respondent loses the present proceeding, its rights would be unfairly prejudiced. The Respondent submits that it is a basic principle of law not to make a decision based on a disputed fact, but to wait the completion of the applicable proceedings pertaining to that disputed fact. In the present case, the question whether the Complainant has earlier rights sufficient to prevail in the opposition proceedings against the trademark application for EROXONIN MED3000 is a disputed fact that is subject to complex trademark proceedings. On this basis, the Respondent requests the Panel not to make a decision regarding whether or not the Complainant has previous rights sufficient to challenge the trademark application for EROXONIN MED3000 prior to the completion of the opposition proceedings. According to the Respondent, the issuance by the Panel of such decision now would restrict the fundamental rights of the trademark applicant and its related party the Respondent to use all discovery and other stages of the USPTO TTAB opposition proceedings in order to challenge the allegation that the term "MED3000" was first used by the Complainant. The Respondent states in this regard that courts and tribunals, such as the TTAB, have competence to resolve trademark disputes, and the UDRP is limited to cases of domain name hijacking, so the Panel is not competent to decide whether it was the Complainant or the applicant of the trademark application for EROXONIN MED3000 who used the term "MED3000" for the first time.

The Respondent also submits that the Complainant has not provided substantial evidence that its EROXON trademark is well known. According to the Respondent, neither the evidence nor the comparisons provided by the Complainant provide any clear and conclusive evidence showing that the EROXONIN brand is the result of an intention by the Respondent or an affiliate to copy, in bad faith, the Complainant's earlier and established EROXON brand. It maintains that the Complainant presents groundless accusations that the Respondent was, prior to the registration of the disputed domain name, aware of the Complainant's EROXON trademark and the Eroxon product and does not present any direct evidence showing such awareness.

The Respondent claims that the Complainant has engaged in reverse domain name hijacking, as it attempts to secure the disputed domain name by making cybersquatting claims against a legitimate domain name owner with the aim to intimidate it into transferring the ownership of the disputed domain name.

## **6. Discussion and Findings**

### **Procedural issue – other proceedings**

As submitted by the Parties, on August 23, 2024, the Complainant filed an opposition against the United States trademark application for "EROXONIN MED3000", which was applied for by a third party related to the Respondent, and opposition proceedings are currently pending before the TTAB of the USPTO against this trademark application.

The Respondent maintains that the current dispute is a complex trademark dispute involving various parties, for which the Policy is not supposed to be used, and that the issue of whether the Complainant has earlier trademarks rights preceding the trademark application for EROXONIN MED3000 should be decided by the TTAB. The Respondent requests the Panel not to make a decision on this issue prior to the completion of the opposition proceedings against the trademark application. The Panel understands this request as a request for suspension of the present proceeding until the conclusion of the opposition proceedings before the TTAB.

The Panel notes that the subject-matter of the present proceeding includes only the three elements defined by the Policy. Its scope does not include the issues that need to be decided in the trademark opposition proceedings, and its outcome cannot prejudice or otherwise influence the outcome of such proceedings. It is not the mission of this Panel to decide the merits of the opposition filed by the Complainant against the trademark application, and a Panel decision on the merits of the Complaint cannot in any way limit the rights of the trademark applicant to present its case in the opposition proceedings.

At the same time, the subject-matter of the opposition proceedings does not include the issue of whether the disputed domain name should be transferred to the Complainant or remain with the Respondent.

Also, the Respondent may avail itself of the provisions of Paragraph 4(k) of the Policy if it is not satisfied with the decision of the Panel. It also bears mention that, under Paragraph 10(c) of the Rules, it is the Panel's duty to ensure that the administrative proceeding takes place with due expedition.

Taking all the above into account, the Panel concludes that the fact that opposition proceedings are currently pending before the TTAB between the Complainant and the applicant of the United States trademark application for "EROXONIN MED3000" does not justify a suspension of the present proceeding until the completion of the opposition proceedings, and that it is appropriate for the Panel to proceed with a decision on the merits of the Complaint without awaiting the outcome of the opposition proceedings.

#### **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 the EROXON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the EROXON trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the EROXON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the letters "in") may bear on assessment of the second and third elements, the Panel finds the addition of this element does not prevent a finding of confusing similarity between the disputed domain name and the EROXON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 submitted a Response, but it 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 EROXON trademark was first registered six years before the disputed domain name, which is confusingly similar to this trademark and resolves to a website that offers goods that are the same or similar to the goods offered by the Complainant under the EROXON trademark. The Complainant has submitted evidence that, prior to the registration of the disputed domain name and prior to the filing of the trademark application for EROXONIN MED3000 by a person related to the Respondent, the Complainant’s Eroxon product has received marketing authorizations for the European Union, the United States, the United Kingdom, and other territories, and that the same product has received online publicity, including under its clinical trial codename MED3000.

The Respondent maintains that the Complainant has made “groundless accusations that the Respondent was, prior to the registration of the disputed domain name, aware of the Complainant’s EROXON trademark and the Eroxon product”, but this statement, certified as accurate according to Paragraph 5(c)(viii) of the Rules, is easily disproven by the header of the Respondent’s own website, which advertises the Respondent’s Eroxonin MED3000 product as an “Eroxon analogue”. There is also no explanation by the Respondent how it happened to independently choose a name so similar to Eroxon and moreover containing Eroxon’s clinical trials codename for a product advertised for the treatment of the same condition in men and as being an analogue to Eroxon.

As discussed in section 2.12 of the [WIPO Overview 3.0](#), panels have recognized that a respondent’s prior registration of a trademark which corresponds to a domain name will ordinarily support a finding of rights or legitimate interests in that domain name for purposes of the second element. The existence of a respondent trademark does not however automatically confer rights or legitimate interests on the respondent. For example, panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trademark registration where the overall circumstances demonstrate that such trademark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant’s exercise of its rights, even if only in a particular jurisdiction.

Here, the Respondent does not have a registered trademark. There is only a trademark application, filed by a third party, and the Respondent claims that it is related to the trademark applicant – and moreover the Complainant is opposing this application. The Respondent does not submit any supporting evidence for its affiliation to the applicant, but even if there is such an affiliation, this still does not support a finding of rights or legitimate interests of the Respondent in the disputed domain name for purposes of the second element, and not only because the applied for trademark has not been registered yet. In view of the totality of the circumstances of this case discussed above in this section, it rather appears that the trademark application was filed to circumvent the application of the UDRP or otherwise prevent the Complainant’s exercise of its rights, and the Panel declines to find the Respondent rights or legitimate interests in the disputed domain name on the basis of the trademark application for EROXONIN MED3000, filed in the United States.

Taking all the above into account, the Panel accepts that the Respondent has targeted the Complainant with the registration and use of the disputed domain name in an attempt to create an association with the Complainant and thus to attract customers for its product for commercial gain. Such activity cannot give rise to rights or legitimate interests in the disputed domain name.

The Panel therefore finds that 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 Respondent registered the disputed domain name which is confusingly similar to the EROXON trademark after the Complainant started using the same trademark for its Eroxon product and after this product obtained marketing authorizations in many jurisdictions around the world. The Respondent has not provided any explanation for its choice of the name of its product and of the disputed domain name, and its denial of knowledge of the Complainant's trademark and product is contradicted by its own website which advertises the Respondent's Eroxonin MED3000 product as an analogue to the Complainant's Eroxon product, and by the fact that "MED3000" was the clinical trial codename of the Complainant's product. It simply is not plausible that the Respondent chose the name of its product and the disputed domain name (not to mention the Complainant's trial code name appearing on the Respondent's site) independently of the Complainant's trademark and product name. In light of the above, and as also discussed in the previous section, the United States trademark application for EROXONIN MED3000 appears to have been filed to circumvent the application of the UDRP or otherwise prevent the Complainant's exercise of its rights.

Taking all the above into account, the Panel reaches the conclusion that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the Complainant's EROXON trademark as to the endorsement by the Complainant of the Respondent's Eroxonin MED3000 product offered on the website at the disputed domain name. This supports a finding of bad faith registration and use of the disputed domain name.

The Panel therefore 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 <erixonin.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: October 18, 2024