

ADMINISTRATIVE PANEL DECISION

Ferring B.V. v. Domain Admin / Chen Li

Case No. D2022-0541

1. The Parties

The Complainant is Ferring B.V., Netherlands, represented by Jacobacci Avocats, France.

The Respondent is Domain Admin, United Kingdom / Chen Li, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <eufflexxastore.com> is registered with Stork R, informacijske storitve, d.o.o. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 2022, 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 March 25, 2022.

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 March 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2022.

The Center appointed Lorenz Ehrler as the sole panelist in this matter on April 25, 2022. 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 member of the Ferring group of companies, which is active in the field of biopharmaceuticals. It owns subsidiaries in about 65 countries and sells its products in 110 countries around the world. Among other things, it distributes under the brand name EUFLEXXA a product for the treatment of knee pain due to osteoarthritis. EUFLEXXA is a preparation that is subject to medical prescription.

The Complainant holds 89 trademark registrations for EUFLEXXA in many countries/regions of the world, in particular:

- European Union trademark EUFLEXXA, no. 003919768, filed in 2004 and registered in 2005, claiming in particular “preparations for the treatment of arthritis” (class 5) and “prefilled syringes for the treatment of arthritis” (class 10);
- United States trademark EUFLEXXA no. 3346569, filed in 2005 and registered in 2007, claiming in particular “preparations for the treatment of arthritis; syringes sold filled with preparations for the treatment of arthritis” (class 5);
- United Kingdom trademark EUFLEXXA no. UK00903919768, filed in 2004 and registered in 2005, claiming “preparations for the treatment of arthritis” (class 5) and “prefilled syringes for the treatment of arthritis” (class 10).

Furthermore, the Complainant holds 38 domain names, among which <euflexxa.com> is used to display information on the mentioned pharmaceutical product.

The disputed domain name <euflexxastore.com> was registered on December 3, 2021. The disputed domain name resolves to an e-commerce website on which the Complainant's product EUFLEXXA is allegedly offered for sale to doctors, clinics, etc., but not to individuals.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its EUFLEXXA trademarks. It stresses the fact that the additional element “store” in the disputed domain name, far from reducing the risk of confusion, actually reinforces it.

Furthermore, the Complainant states that the Respondent is not affiliated or related to it in any way, and that it did not authorize the Respondent to use the trademark in question. The Complainant considers that the Respondent, not being an authorised reseller, is not entitled to use the EUFLEXXA trademark in the disputed domain name that resolves to an e-shop on which EUFLEXXA products are offered for sale.

Lastly, Complainant contends that the Respondent uses the disputed domain name and the website to which it resolves in a way to create confusion with the Complainant's trademark EUFLEXXA, which in its view constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant holds several trademarks for EUFLEXXA. These trademarks are registered in International class 5 (pharmaceutical products) in many countries, in particular in the European Union, the United States and in the United Kingdom, where the Respondent seems to reside. The trademarks put forward by the Complainant are sufficient to found the Complaint.

Under the UDRP, the identity or confusing similarity requirement under paragraph 4(a) of the Policy requires identity or confusing similarity between complainant's trademarks and respondent's domain name. There is no requirement of similarity of goods and/or services (*e.g.*, *AIB-Vincotte Belgium ASBL, AIB-Vincotte USA Inc./Corporation Texas v. Guillermo Lozada, Jr.*, WIPO Case No. [D2005-0485](#)).

The existence of a confusing similarity within the meaning of paragraph 4(a) of the Policy makes no doubt in the present case, given that the distinctive element in the disputed domain name, *i.e.* "EUFLEXXA", is identical with the Complainant's trademark EUFLEXXA. Taking into account that the trademark EUFLEXXA is recognizable, the other element of the disputed domain name, *i.e.* the word "store", is not sufficient to avoid a finding of confusing similarity.

The Panel finds that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant has shown that it owns EUFLEXXA trademarks, and it has explicitly contested having granted the Respondent any right to use its trademarks. The Complainant has thus made a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name. In line with previous UDRP panel decisions, this means, in principle, that the burden of production shifts to the Respondent (*e.g.*, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

However, as results from the case file, the Respondent offers for sale goods identical or similar to those offered by the Complainant's group, by using the distinctive sign EUFLEXXA. Even though it is unclear whether the goods offered on the Respondent's website which is operated under the disputed domain name are genuine products or counterfeits, and even though the Respondent does not identify itself on the Contact page of its website, the Panel must consider the hypothetical (but rather unlikely) case that the goods offered are genuine, and therefore examine whether the website meets the *Oki Data* criteria (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

While the Complainant (possibly) meets the first two requirements, namely that (i) it must be offering the goods or services at issue and (ii) that it must use the website to exclusively offer goods under the trademark contained in the disputed domain name, it clearly fails to overcome the hurdle of the third requirement. The third requirement is that the website must accurately disclose the Respondent's relationship with the

Complainant. In the present case, this is far from being the case, as the Respondent's website does not contain any indications whatsoever clarifying the identity and the relationship of the Respondent with the Complainant (e.g., as an authorised distributor). To the contrary, its website creates the false impression that the Internet user is on the trademark owner's website, thus causing confusion. As the Complainant rightly points out, the word string "euflexxastore" actually constitutes an indication that the pharmaceutical preparation EUFLEXXA can be purchased on or through the Respondent's website, and therefore even increases the risk of confusion (*Rockefeller & Co., Inc. v. All Value Network a/k/a AVN*, WIPO Case No. [D2011-1957](#)). As a result, the Oki Data principles do not show any legitimate use made by the Respondent as a distributor of (possibly) genuine EUFLEXXA goods.

Since no other legitimate use is likely, the Panel reaches the conclusion that the Complainant has made a *prima facie* showing that the Respondent does not use the disputed domain name for legitimate commercial or fair use purposes.

The Respondent having failed to respond to the Complaint, this Panel concludes that the Respondent does not have any rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must, in addition to the matters set out above, demonstrate that the disputed domain name has been registered and is being used in bad faith.

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The undisputed *prima facie* evidence establishes that the Respondent is not affiliated with the Complainant, and has no license or other authorisation to use the Complainant's trademark or name.

The Respondent registered the disputed domain name well after the Complainant's mark was in use and became known within its specific product market. The Panel finds that the Respondent must have known about the Complainant's trademark and business when registering the disputed domain name. Given the use to which the Respondent put the disputed domain name shortly after registering it, it seems totally impossible to this Panel that the Respondent was unaware of the Complainant's trademark at the time of the registration of the disputed domain name.

The Respondent's choice of the disputed domain name, which incorporated the EUFLEXXA trademark, and its offering of goods identical or similar to the Complainant's under the latter's trademark EUFLEXXA, indicates indeed that the Respondent was aware of the existence of the Complainant's trademark EUFLEXXA.

Even in the unlikely event that the Complainant offers genuine EUFLEXXA goods (e.g. as a non-authorised reseller) rather than counterfeits, the misleading of Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by or affiliated with the Complainant and its business, or that the Respondent's activities are approved or endorsed by the Complainant, indicates bad faith (*Swarovski Aktiengesellschaft v. bingbing chen*, WIPO Case No. [D2011-1524](#)).

The Respondent has not submitted any evidence to rebut the Complainant's claims and assertions. In the absence of such evidence and based on the evidence submitted by the Complainant and having regard to all the relevant circumstances, the Panel accepts the Complainant's contentions that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) 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, <euflexxastore.com>, be transferred to the Complainant.

/Lorenz Ehrler/

Lorenz Ehrler

Sole Panelist

Date: April 28, 2022