

ADMINISTRATIVE PANEL DECISION

Futura Medical Developments Limited v. Roman Vyrski
Case No. D2024-5032

1. The Parties

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

The Respondent is Roman Vyrski, Belarus.

2. The Domain Name and Registrar

The disputed domain name <erixonin.shop> 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 December 5, 2024. On December 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 December 6, 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 December 6, 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 December 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on January 15, 2025. 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, which is 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 of America (“United States” or “US”), the European Union, the United Kingdom, and other countries in the Middle East and Latin America.

The Complainant is the owner of a number of trademark registrations for the sign “EROXON” (the “EROXON trademark” including:

- the United States trademark EROXON with registration No. 5410070, registered on February 27, 2018, for pharmaceutical products 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.

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 disputed domain name was registered on October 27, 2024. It resolves to an English language website, which purports to offer products under the brand “Eroxonin”, including “Eroxonin Stimulating Gel for Men – Male Massage Cream Helps Restore Your Confidence 1.75 FL OZ”.

The Respondent is the same as the respondent in a previous case *Futura Medical Developments Limited v. Roman Vyrski*, WIPO Case No. [D2024-3680](#). The Complainant has shown that it filed an opposition in the proceedings before the United States Patent and Trademark Office (“USPTO”) against a 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 affiliated to the Respondent. The Panel notes that the above trademark application was abandoned following the filing of the opposition by the Complainant on the basis of its EROXON trademark, and the registration was refused by 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.

Notably, the Complainant contends 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 prevent a finding of confusing similarity with the EROXON trademark.

The Complainant furthermore contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it is used to impersonate the Complainant or to suggest an endorsement by the Complainant of the Respondent’s product Eroxonin and the website at the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. The Complainant thus submits that there is no legitimate reason for the Respondent to register the disputed domain name which contains the earlier registered EROXON trademark in its entirety and which is used to host a website on which the Eroxonin 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 did not reply to the Complainant's contentions in this complaint.

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 in the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other elements here "in", may bear on assessment of the second and third elements, the Panel finds the addition of such element does not prevent a finding of confusing similarity between the disputed domain name and the mark 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 with 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 that the Complainant has established the second element of the Policy.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent registered the disputed domain name after the Complainant had registered and had started using the EROXON trademark and after the panel ordered a transfer of the domain name in *Futura Medical Developments Limited v. Roman Vyrski*, WIPO Case No. [D2024-3680](#). The disputed domain name is being used for an active website on which the EROXONIN product is offered for sale, and the Panel notes that the Parties operate in related business fields. Noting the composition of the disputed domain name, the date of the registration of the disputed domain name (which was immediately after the abovementioned decision) and its use, the Panel finds that the Respondent was aware of its similarity with the Complainant's EROXON trademark. Therefore, the Panel finds that the Respondent registered the disputed domain name at least with awareness of the risk that confusion may arise due to its similarity with the Complainant's rights in the EROXON trademark, if not in an attempt to unduly benefit from the similarity with the Complainant's rights. By registering and using the disputed domain name, the Respondent has thus 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, and the registration and use of the disputed domain name can thus be characterized as being bad faith registration and use.

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 <erixonin.shop> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: February 5, 2025