Decision for dispute CAC-UDRP-100892

Case number	CAC-UDRP-100892
Time of filing	2014-12-11 14:38:07
Domain names	buynuvigilquick.com, buyprovigil-quick.com, buyprovigilextra.com, buyprovigilmeds.com, nuvigilquick.com, nuvigilrx.com, provigilforsale.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Cephalon, Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Organization	Alen Mironassyan, Alen Mironassyan

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant owns numerous PROVIGIL trademark registrations throughout the world, including but not limited to the following federal trademark registrations in the United States:

- Reg. No. 2,000,231, first used in 1995, with a priority application-filing date of March 31, 1994, issued in 2006, in International Class 5; and
- Reg. No. 2,499,937, first used in 1995, with a priority application-filing date of November 9, 1999, issued October 23, 2001, in International Class 5.

Further, the Complainant owns numerous NUVIGIL trademark registrations throughout the world, including but not limited to the following federal trademark registrations in the United States:

- Reg. No. 3,538,564, issued November 25, 2008 with a priority filing date of May 27, 2004, issued in 2006, in International Class 5; and
- Reg. No. 3,782,440, issued April 27, 2010 with a priority application filing date of February 11, 2009, In International Class 5.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a global biopharmaceutical company that markets medicines in several therapeutic areas. This includes the Provigil and Nuvigil prescription medicines that are indicated to improve wakefulness in adults who experience excessive sleepiness due to obstructive sleep apnea, shift work disorder, or narcolepsy. In the United States, Provigil and Nuvigil are Schedule IV [C-IV] medications, as determined by the Drug Enforcement Agency (DEA), because they have the potential to be abused or lead to dependence.

The following domain names are subject of these proceedings:

1. BUYNUVIGILQUICK.COM, registered on March 24, 2013 under the name of Alen Mironassyan of Bordeaux, France with the email address support@joeseb.com;
2. BUYPROVIGIL-QUICK.COM, registered on June 15, 2013 under the name of Mike Bento of Bresnan, Croatia, with the email address support@joeseb.com;
3. BUYPROVIGILEXTRA.COM, registered on April 2, 2013 under the name of Vasju Pere of Paris, France, with the email address support@raiseaum.com;
4. BUYPROVIGILMEDS.COM, registered on April 1, 2013 under the name of Vasju Pere of Paris, France, with the email address support@raiseaum.com;
5. NUVIGILQUICK.COM, registered on April 22, 2014 under the name of Michael Thornton of Prague, Czech Republic, with the email address support@raiseaum.com;
6. NUVIGILRX.COM, registered on December 12, 2012 under the name of Vasju Pere of Paris, France, with the email address support@raiseaum.com; and
7. PROVIGILFORSALE.COM, registered on April 6, 2013 under the name of Vasju Pere of Paris, France, with the email address support@raiseaum.com

The Complainant has requested to consolidate the multiple registrants as Respondents in a single administrative proceeding pursuant to paragraph 3 (c) or 10 (e) of the Rules.

All disputed domain names are used for commercial websites either advertising the sale of medicines without prescription being required, or general advertisement links to a variety of businesses and products.

The Complainant argues that it has not authorized, licensed, or permitted Respondents to register or use the disputed domain names, or to use its trademark. Respondents are not known by the disputed domain names, nor have Respondents acquired any trademark rights in respect of the domain names.

The Complainant further contends that Respondents have used the disputed domain names to intentionally attempt to attract, for commercial gain, Internet users to websites by creating a likelihood of confusion with the Complainant’s trademarks as to source, sponsorship, affiliation, or endorsement of the websites or of products available at the websites or through the sites.

The Complainant finally contends that both the nature of the disputed domain names as such as well as their current use clearly indicate that Respondents were aware of Complainant's trademarks when registering the domain names.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown Respondents to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. Consolidation of Respondents

The Panel accepts Complainant's request to proceed against multiple Respondents in this single administrative proceeding pursuant to 10 (e) of the Rules. Even though several different Respondent names and addresses have been used for registering the disputed domain names, the Panel is convinced that in fact only one single person or entity controls all disputed domain names. The postal addresses for the various Respondents all turned out to be false for the CAC's letters to the various Respondent addresses were all returned as undeliverable. The Complainant has also provided convincing evidence that the two email addresses which were used for all domain name registrations, support@joeseb.com and support@raiseaum.com, are under the common control of one single person or entity. To this end the Complainant has particularly pointed out that for different domain names which were registered either using support@joeseb.com or using support@raiseaum.com (i) the same registrars was used, (ii) identical website content was displayed, (iii) identical name server changes were made at a single point in time, and (iv) identical affiliate ID numbers for an affiliate marketing program were used. Therefore, the Panel is of the opinion that (i) the domain names or the websites to which they resolve are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.

B. Material Requirements of the Policy

I. Identical or Confusingly Similar

The Complainant's trademarks are reproduced in the disputed domain names in their entirety, while merely descriptive, generic elements have been added in the disputed domain names. The disputed domain names are therefore confusingly similar to the Complainant's trademarks, and the Panel finds that the first requirement of paragraph 4(a) of the Policy has been satisfied.

II. No Rights or Legitimate Interests

The Complainant has not authorized, licensed, or permitted Respondents to register or use the disputed domain names, or to use its trademark. Respondents are not known by the disputed domain names, nor have Respondents acquired any trademark rights in respect of the domain names. The disputed domain names clearly allude to the Complainant's trademarks, and Respondents use them for commercial gain with the purpose of capitalizing on them to create a likelihood of confusion.

The domain names do not make clear that they pertain to websites unconnected with Complainant (there is no disclaimer on the sites whatsoever—let alone a conspicuous one), and Respondents use the domain names to advertise buying Complainant's products online without disclosing the nature of their relationship with the online pharmacies, or even their own identity. Some of them prominently advertise that no prescription is needed even though Provigil and Nuvigil are controlled substances. None of the above constitutes a legitimate noncommercial or fair use under the Policy.

III. Registered and Used in Bad Faith

It is established as undisputed that the Complainant's trademarks are well-known. Further, the trademarks predate the registrations of all disputed domain names. The Respondents can be considered to be aware of the Complainant's trademarks when registering the domain names, as obviously also follows from the way the domain names are currently being used. Accordingly, the Panel assumes that by registering and using the domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their web sites, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of their web sites and/or of products on their web site. Therefore, the requirement of bad faith registration and use of the disputed domain names pursuant to article 4(a)(iii) of the Policy has also been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BUYNUVIGILQUICK.COM**: Transferred
2. **BUYPROVIGIL-QUICK.COM**: Transferred
3. **BUYPROVIGILEXTRA.COM**: Transferred
4. **BUYPROVIGILMEDS.COM**: Transferred
5. **NUVIGILQUICK.COM**: Transferred
6. **NUVIGILRX.COM**: Transferred
7. **PROVIGILFORSALE.COM**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2015-02-17

Publish the Decision