Decision for dispute CAC-UDRP-101386

Case number	CAC-UDRP-101386
Time of filing	2016-12-09 10:30:38
Domain names	micardis.top

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Alla Malyshenko

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark registration No. 523578 "MICARDIS", granted on May 18, 1988 and duly renewed.

The Complainant also owns several domain names incorporating the wording "MICARDIS", all of them registered since 1999 (e.g. <micardis.com> and <micardis.net>).

FACTUAL BACKGROUND

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

- The Complainant owns a portfolio of brands including the international trademark registration no. 523578 "MICARDIS", granted on May 18, 1988 and duly renewed.

- Likewise, the Complainant is the owner of a portfolio of domain names including the wording "MICARDIS" since 1999.

- The Respondent has registered the domain name <MICARDIS.TOP> only last November 4, 2016. Such domain entirely

incorporates the Complainant's trademark and its domain names.

- According to the Complainant, the Respondent has no rights or legitimate interests in respect of the domain name and is not related in any way with the Complainant's business. In particular, the Complainant states that the Respondent is not affiliated with BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG, nor authorized by such company in any way. In addition, The Complainant affirms it currently does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use, or apply for registration of the disputed domain name by The Complainant.

- The Complainant contends that the disputed domain name <MICARDIS.TOP> has been registered and being used in bad faith, namely in order to prevent the Complainant from reflecting the mark in the disputed domain name.

- The disputed domain name points to a blank page and, despite a cease and desist letter sent by the Complainant's representative, the Respondent did not provide any explanation concerning the registration (and the passive use) of the disputed domain name.

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 the Respondent 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

1. The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to the Complainant`s trademarks (within the meaning of paragraph 4(a)(i) of the Policy). In particular, the Panel finds that the disputed domain name is identical to the Complainant's trademark "MICARDIS", as well as to the relative domain names registered by BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG since 1999.

In this regard, it shall be reminded how several previous UDRP Panels have held that when a domain name entirely incorporates a complainant's registered trademark, this fact might be sufficient to establish confusing similarity for purposes of the Policy (see e.g. RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin, WIPO Case No. D2010-1059; Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150).

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

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of,

or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent, not even after the cease and desist letter received from the Complainant on November 14, 2016.

As a matter of fact, there are no arguments why the Respondent could have own rights or legitimate interests in the disputed domain name. "MICARDIS" is a fancy word and it does not seem to have any other meaning than the drug produced and commercialized by the Complainant. Therefore, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <MICARDIS.TOP>.

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

As stated above, the Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent, not even after the cease and desist letter received from the Complainant on November 14, 2016.

It is undeniable that the failure of the Respondent to reply to a cease and desist letter may be further evidence of bad faith (see e.g. Coutts & Co. v. Sande Skalnik, Patrick Harding, WIPO Case No. D2015-1590; Citrix Systems, Inc. v. Domains by Proxy, LLC / Sirishareddy Idamakanti - Sirisha Idamaknti, WIPO Case No. D2015-0017; E. & J. Gallo Winery v. Oak Investment Group, WIPO Case No. D2000-1213; Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party, WIPO Case No. D2000-0330) and, according to the Panel, the above actually applies in this case.

In the absence of a Response and given the reputation of the Complainant and its trademarks supported by the submitted evidence, the Panel infers that the Respondent had the Complainant's trademarks "MICARDIS" in mind when registering <MICARDIS.TOP>. Consequently, the Panel believes that the same was registered and is being (passively) used in bad faith, in order to prevent the Complainant from reflecting the mark in the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MICARDIS.TOP**: Transferred

PANELLISTS

Name	**Dr. Tommaso La Scala**

DATE OF PANEL DECISION 2017-01-05

Publish the Decision