Decision for dispute CAC-UDRP-101450

Case number	CAC-UDRP-101450
Time of filing	2017-02-20 09:52:39
Domain names	COMBIVENT.ONE

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Price Savers

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks containing the name “COMBIVENT”, all registered well before the Respondent registered the Disputed domain name, including:

- EU trademark 000612911 (word trademark COMBIVENT; filing date 11/08/1997; registration date 15/11/1999; class 5: "pharmaceutical and veterinary preparations");
- Tunisian trademark TN/E/1997/210 (combined trademark COMBIVENT; registration date 04/02/1997; class 5 "pharmaceutical and hygienic preparations") (the Panel notes that the Respondent is based in Tunisia);
- German trademark 1144867 (word trademark COMBIVENT; filing date 29/07/1989; registration date 18/08/1989; class 5).

The Complainant filed evidence that it is actively using at least its word trademarks.

The Complainant also provided evidence that it owns several domain names containing the name “COMBIVENT”, including <combivent.com>, <combivent.de>, <combivent.fr>, and <combivent.eu>, all registered well before the Respondent registered the Disputed domain name.

Finally, the Complainant filed evidence that it registered its international trademark "COMBIVENT" with the Trademark ClearingHouse, well before the Respondent registered the Disputed domain name on 16/01/2017.

FACTUAL BACKGROUND

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

The Complainant is a family owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (18611939) in Ingelheim am Rhein.

“COMBIVENT” is a multivitamin and mineral supplements brand developed to enhance people's physical and mental well-being. COMBIVENT is indicated for use in patients with chronic obstructive pulmonary disease (COPD) on a regular aerosol bronchodilator (inhaler) who continue to have evidence of bronchospasm (airway narrowing) and who require a second bronchodilator.

On January 30th, 2017, a cease and desist letter was sent by email to the Respondent at “red.gloss32@gmail.com”. The Respondent did not answer to this cease and desist letter. Before the cease and desist letter was sent, the website was inactive; the Respondent did only activate the website after receiving the letter.

Reference was made also to:

- CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP <dulcolax.xyz>

- WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name to be 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 Disputed 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 Disputed domain name to have been registered and 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 that there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the Disputed domain name <combivent.one> is identical to the Complainant’s trademarks.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed domain name; that the Respondent is not related to the Complainant; that the Complainant does not carry out any activity for, nor has any business with the Respondent; and that the Complainant did not grant any licence or authorization to the

Respondent to use the Complainant's trademarks or apply for the Disputed domain name.

Moreover, the Complainant contends (and provided evidence) that the Disputed domain name resolves to a website linked to a third site that offers COMBIVENT's pharmaceutical drugs in competition with the Complainant, by the display of a button "Buy Now" and a text answering the question "How do I safely buy Combivent online". The Complainant also contends (and provided evidence) that clicking on the button "buy now" redirects a visitor to a third party website named <pills2sale.com> which sells nonauthorized COMBIVENT drugs and other products from Competitors of the Complainant. The Complainant rightfully contends that the Respondent has not developed a legitimate use in respect of the Disputed domain name. Competing use is not considered a bona fide offering of goods or services, nor a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(i) and Policy ¶ 4(c)(iii).

The Complainant contends that the Respondent was seeking to use the Disputed domain name only to divert consumers to its own website and that the Respondent has no legitimate interests in respect of the Disputed domain name.

The Panel notes that the Disputed domain names holder's name or contact details contain no reference to COMBIVENT or a similar word or name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the Disputed domain name <combivent.one>.

The Complainant also contended and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that the Disputed domain name is identical to the prior trademark COMBIVENT of the Complainant, as registered with the Trademark ClearingHouse. The Complainant also refers to the distinctiveness and reputation of its COMBIVENT trademarks, and to the fact that the website linked to the Disputed domain name contains a text "How do I safely buy Combivent online" and a button "buy now" which in its turn links to a website where the unauthorized COMBIVENT products and competing products are being sold. This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration (or use) of the Disputed domain name. The Complainant rightfully contends that the Respondent has used the Disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant's trademarks, and that the Respondent has made the registration with that intention, constituting registration in bad faith. The Complainant also rightfully contends that the Respondent uses the Disputed domain name in bad faith to redirect Internet traffic to a for profit online pharmacy that sells pharmaceuticals directly competing with the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **COMBIVENT.ONE**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2017-03-15

Publish the Decision