

Decision for dispute CAC-UDRP-104548

Case number	CAC-UDRP-104548
Time of filing	2022-05-03 08:45:43
Domain names	buyvaldoxononline.com, coralanpharmacyonline.com

Case administrator

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

Organization	BIOFARMA
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Complainant representative

Organization	IP TWINS
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Respondent

Name	Goran Gichevski
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademarks:

- European Trademark registration VALDOXAN No. 002432904, dated 31 October 2001, covering products in international class 5;
- International Trademark Registration VALDOXAN No. 783177, dated 26 April 2002, covering products in international class 5, notably designating China, USA and Russia;
- International Trademark Registration CORALAN No. 679923, dated 19 September 1997, covering products in international class 5, notably designating China and Russia; and
- U.S. Trademark Registration CORALAN No. 86265697, dated 31 March 2015 and covering products in international class 5.

The Complainant further alleged that it is the registrant of the domain name <valdoxan.com>, registered on 9 November 2001, and the domain name <coralan.com>, registered on 26 July 1999, as well as other domain names containing its trademarks VALDOXAN and CORALAN.

FACTUAL BACKGROUND

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

The Complainant is part of the Servier Group: the largest French pharmaceutical group on an independent level and the second largest pharmaceutical French group in the world. The group is active in 149 countries and employs more than 22,000 people throughout the world. 100 million patients are treated daily with Servier medicinal products and generics.

VALDOXAN is a medicine developed by the Servier Group. It uses Agomelatine as its active substance, which belongs to the category of the antidepressants. Agomelatine has been authorized by the European Medicine Agency since 2009.

CORALAN is a medicine used to treat chronic cardiac insufficiency as well as chronic, stable angina. It uses Ivabradine as its active substance, which is authorized by the European Medicine Agency since 2005.

The disputed domain names <buyvaldoxanonline.com> and <coralanpharmacyonline.com> were both registered on 9 February 2022 and are inactive.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain names and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant contends that the disputed domain names are confusingly similar to the Complainant's registered trademarks. Both domains contain either the "valdoxan" or "coralan" trademark of the Complainant in their entirety, associated to either "buy" and "online" or "pharmacy" and "online". The "valdoxan" and "coralan" trademarks are composed of arbitrary, fanciful terms. Their combination with the above-mentioned generic terms does not allow the disputed domain names to avoid the risk of confusion with said trademarks. On the contrary, in both cases internet users will be led to believe that the disputed domain names would allow them to purchase the Complainant's medicine online. It is common case law within UDRP proceedings that the addition of TLDs such as ".com" are not significant in determining whether the disputed domain name is identical or confusingly similar to the mark. The Complainant thus contends that the first requirement under paragraph 4(a) of the UDRP is satisfied.

In view of the Complainant, the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names. Firstly, according to the Complainant's verifications, the Respondent is not commonly known by the disputed domain names, which redirects towards error pages. The Complainant's queries performed on Google search engine on "valdoxan" and "coralan" only brought up results concerning the Complainant's medicine on the first pages. The Complainant performed verifications on WIPO's global brand database: all the trademarks detected were in the name of the Complainant. Further to the Registrar Verification, the Complainant performed additional searches in the name of the Respondent which show no trademark in the name of the Respondent. Secondly, the Complainant verifications did not allow to find any clue of preparation to use the disputed domain names in connection with a bona fide offering of goods or services. The disputed domain names are currently not actively used on the web. Thirdly, the Respondent has never been granted authorization, license or any right whatsoever to use the trademarks of the Complainant. The Respondent is not commercially linked to the Complainant. Fourthly, since the adoption and extensive use by the Complainant of the

trademarks VALDOXAN and CORALAN predate the registration of the disputed domain names by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name.

The Complainant strongly believes that none of the circumstances which set out how a respondent can prove his rights or legitimate interests are present in this case. In light of the above developments, given that the Complainant has made a prima facie case that the Respondent lacks legitimate rights or interest in the disputed domain names, the burden of proof shifts to the Respondent, who should come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain names. Therefore, the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names.

The Complainant then contends that the Respondent has registered and is using the disputed domain names in bad faith, for the following reasons. Firstly, the Complainant states that the Servier Group is so widely well-known that it is very unlikely that the Respondent ignored the rights of the Complainant on the trademarks VALDOXAN and CORALAN. Secondly, VALDOXAN and CORALAN are fanciful, arbitrary terms, devoid of any meaning in any dictionary, to the best of the Complainant's knowledge. The Complainant contends that the Respondent has not registered the disputed domain names due to a dictionary meaning, a supposed value as generic terms. Moreover, due to the fancifulness of "valdoxan" and "coralan", their complexity (being 7 and 8-characters strings), and the reputation of the Servier Group, the Complainant contends that there is no way the registrations of the disputed domain names are a mere coincidence. This is especially true since the same Respondent holds two domain names each containing a different Trademark from the Complainant. The Complainant contends that the Respondent has engaged in a pattern of registrations targeting the Complainant's trademarks. Thirdly, the Respondent used a WHOIS privacy service for the registration of domain names containing highly distinctive, intensively used trademarks, combined with terms suggesting online sale of medicines. In light of the above developments, the Complainant considers any good-faith use inconceivable and contends that the disputed domain names are used in bad faith according to the doctrine of "passive holding". The Complainant concludes that the disputed domain names were registered, has been and are being used in bad faith by the Respondent.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

This is a mandatory administrative proceeding pursuant to Paragraph 4 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 CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (i) the domain name is identical

or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the word marks “VALDOXAN” and “CORALAN” which all significantly pre-date the disputed domain names. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The disputed domain name <buyvaldoxanonline.com> incorporates the Complainant’s trademark “VALDOXAN” in its entirety. The Panel agrees with the Complainant that the adding of the generic terms “buy” and “online” does not avoid the risk of confusion as it lacks distinctive character and therefore is not sufficient to prevent or diminish the confusing similarity with the Complainant’s trademark. These additional generic terms clearly expand on the incorporated Complainant’s trademark in that the disputed domain name suggests that products branded “VALDOXAN” may be purchased online there.

The disputed domain name <coralanpharmacyonline.com> incorporates the Complainant’s trademark “CORALAN” in its entirety. Also, here the Panel agrees with the Complainant that the adding of the generic terms “pharmacy” and “online” does not avoid the risk of confusion as it lacks distinctive character and therefore is not sufficient to prevent or diminish the confusing similarity with the Complainant’s trademark. These additional generic terms clearly expand on the incorporated Complainant’s trademark in that the disputed domain name suggests that products branded “CORALAN”, being pharmaceutical products, may be purchased online there.

The Panel therefore finds that the disputed domain names are confusingly similar to trademarks in which the Complainant has rights.

B. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant’s allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant’s trademarks for his commercial activities. In addition, the Respondent is not commonly known by the disputed domain names pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain names have not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Panel therefore finds that the Respondent has no rights or legitimate interest in the disputed domain names.

C. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states, in summary: (a) that the Respondent had actual knowledge of the Complainant’s rights in its trademarks; (b) that the Respondent has engaged in a pattern of registrations targeting the Complainant’s trademarks; and (c) that the disputed domain name is not active.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademarks "VALDOXAN" and "CORALAN". It is well established that mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

In addition, the Panel believes that the Complainant submitted evidence that sufficiently demonstrates the Respondent must have (or should have) been aware of the existence of the Complainant, its trademarks as well as its domain names. It is difficult, if not impossible, to find any good faith reason for the registration of the disputed domain name that contain distinctive brands of pharmaceutical products combined with terms suggesting online sale of medicines by the Respondent. The fact that the Respondent registered two domain names containing different trademarks of the Complainant within mere five minutes is indeed a very strong indication that the Respondent engaged in a pattern of registrations targeting the Complainant's trademarks.

With respect to the fact that the disputed domain names have not been active, the Panel notes that the so-called passive holding of a domain name cannot prevent a finding of bad faith. In this present case the Complainant's trademarks are highly distinctive and there seems no plausible good faith use for the disputed domain names by the Respondent.

With that in mind, the Panel concludes that several signs of bad faith in registering and use of the disputed domain names by the Respondent can be found in this case. Therefore, the Panel finds that the disputed domain names have been registered and have been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BUYVALDOXANONLINE.COM: Transferred
2. CORALANPHARMACYONLINE.COM: Transferred

PANELLISTS

Name	Mgr. Vojtěch Chloupek
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DATE OF PANEL DECISION 2022-06-23

Publish the Decision
