

Decision for dispute CAC-UDRP-104530

Case number CAC-UDRP-104530

Time of filing 2022-05-04 09:31:10

Domain names buyvaldoxan.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BIOFARMA

Complainant representative

Organization IP TWINS

Respondent

Name Igor Ustimenko

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of the EU mark VALDOXAN (002432904, dated 31 October 2001 and duly renewed) and the international mark VALDOXAN (783177, dated 26 April 2002, on the basis of the earlier registration in France and the EU, designating various territories including Russia, China, and the USA), in both respects subsisting in class 5 (pharmaceutical products), and various other national marks in respect of the same string.

FACTUAL BACKGROUND

The Complainant, a company with its seat in Suresnes, Paris (France), is active in the field of pharmaceutical products. It is part of a larger corporate entity which operates at global scale (across around 150 countries). The product which it markets under its mark VALDOXAN is an antidepressant with the active substance Agomelatine which is marketed and sold in around 30 countries; the Complainant has operated a website in this context at the domain name <VALDOXAN.COM> (first registered 9 November 2001) and registered a number of other domain names containing the mark accompanied with other text.

The Respondent, an individual purporting to have an address in Moscow (Russia) (although the address supplied at

registration is incomplete), registered the disputed domain name on 27 September 2016.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. Written notice was dispatched to the details provided by the Respondent, though it is not known whether it was received. One email message was successfully sent, but neither proof of delivery nor notification of undelivery was received by the Provider. The Respondent never accessed the online platform.

The Complainant submits that all of the requirements of the Policy have been met and that the disputed domain name should be transferred to it. It accompanies this submission with a large body of relevant evidence in respect of its business and associated rights, the activities of the Respondent, and other matters; such evidence is appropriately indexed and is referred to in support of the legal arguments included in the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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).

There are only two differences between the disputed domain name and the Complainant's mark. The first is the generic TLD .com, which in accordance with established practice under the Policy is not relevant to the assessment of confusing similarity. The second is the presence of the additional string 'BUY' in the disputed domain name. As such, this is clearly a case where the disputed domain name consists of a mark and a generic term (see WIPO Jurisprudential Overview, version 3.0, paragraph 1.8). Moreover, because the Complainant's mark is in respect of goods offered for sale, the potential for confusing similarity is particularly high in the present case.

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).

The Complainant has made out its prima facie case regarding the absence of rights or legitimate interests. It submits that the Respondent has never been granted authorisation, license or any right whatsoever to use the trademarks of the Complainant, and that there is no commercial link between the Complainant and the Respondent. It also notes that the string VALDOXAN is 'arbitrary' and 'fanciful' - that is, it does not carry any meaning apart from in the context it is used by the Complainant - and supplies evidence in the form of Google searches for the string, stating further that it is not found in any dictionary.

The Respondent has failed to participate in these proceedings and therefore offers nothing that would rebut these submissions. The Panel further notes that the Respondent is known as 'Igor Ustimenko' which does not bear any relationship to the disputed domain name. Moreover, there is nothing apparent to the Panel that would provide any plausible basis for the consideration of rights or legitimate interests. For instance, although there are many cases where a disputed domain name is used for the resale of goods, those cases tend to see evidence being available to a Panel regarding the relevant rights or legitimate interests, such as through the way in which a website presents an accurate account of its activities and its affiliation (or lack thereof) with the proprietor of a mark. In the present case, however, as considered in further detail under bad faith (below), the Respondent has for a period of time acted in a way that does not provide accurate information to end users (potential consumers).

BAD FAITH

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

The Panel accepts that the term VALDOXAN is likely to have been known by the Respondent at the point of registration, given the evidence discussed above in respect of its meaning and the Complainant's activities. Indeed, it is accepted that the Respondent must have had the Complainant and its mark and activities in mind at the point of registration (with due weight

placed upon the Respondent's initial use of a proxy/privacy service when registering the disputed domain name). Further support for this proposition can be drawn from the manner in which the disputed domain name is being used (discussed further in the following paragraph).

The Panel also accepts that the way in which the disputed domain name has been used also points to bad faith. It places particular weight upon the Complainant's submission, supported by extensive evidence, that the Respondent has knowingly offered for sale, through use of the disputed domain name, a third-party, generic medicine based on Agomelatine (not Valdoxan itself). This is more likely than not a case where, as the Complainant submits, a Respondent has deliberately used the Complainant's mark to 'lure internet users and sell them medicines from third-parties'. It is not presently possible to purchase such goods from the Respondent due to takedown activity following the action of the Complainant. The Panel accepts the screenshot (dated 4 April 2022, shortly before the filing of the initial Complaint) supplied by the Complainant, and not challenged by the Respondent, as sufficient evidence of this use.

Taking all of that evidence together, and drawing all appropriate inferences from the Respondent's silence, it is accepted that both registration and use was in bad faith. The Panel notes that the circumstances set out in paragraph 4(b)(iv) of the Policy are of particular relevance (that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by using the disputed domain name and so creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the products offered on said website). The Panel notes the further submissions of the Complainant in respect of 'passive holding' but does not need to address them given the clear basis on the basis of other submissions and evidence for finding that that paragraph 4(a)(iii) has been satisfied.

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

The reasons for the Decision are as set out above. In the absence 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. On the other hand, it is clear that the Complainant has rights in respect of the trade mark VALDOXAN, to which the disputed domain name is similar, differing in substance only through the addition of the term BUY. It is likely, in light of the use of the disputed domain name by the Respondent for the offering for sale of alternative pharmaceutical products, and the artificial nature of the term VALDOXAN which is only associated with the Complainant, that the Respondent would have been aware of the Complainant and its marks and activities. The Panel can find for these reasons that the disputed domain name was registered and is being used in bad faith, and that the Respondent, through its failure to participate, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BUYVALDOXAN.COM**: Transferred

PANELLISTS

| | |
|------|-----------------------|
| Name | Dr Daithi Mac Sithigh |
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DATE OF PANEL DECISION 2022-06-25

Publish the Decision
