Decision for dispute CAC-UDRP-104801

Case number	**CAC-UDRP-104801**
Time of filing	**2022-08-22 09:23:29**
Domain names	**buymicardis.top**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG**

Complainant representative

Organization	**NAMESHIELD S.A.S.**

Respondent

Organization	**Fidel M Finley**

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 owns several trademarks for cardio-vascular preparations, including international trademark MICARDIS with registration number 523578 of May 18, 1988 and international trademark MICARDIS with registration number 691750 of March 13, 1998, for different European jurisdictions, and Botswana, Georgia and China, respectively.

FACTUAL BACKGROUND

Facts asserted by the Complainant and not contested by the Respondent:

The Complainant is a German global research-driven pharmaceutical enterprise founded in 1885 with approximately 50,000 employees. The three business areas of BOEHRINGER are human pharmaceuticals, animal health and biopharmaceuticals. In 2017 alone, net sales of the BOEHRINGER group of companies amounted to about EUR 18.1 million.

The product which is sold under the MICARDIS trademark is a medicine prescribed for the treatment of hypertension.

The disputed domain name <buymicardis.top> was registered on July 20, 2022 and resolves to a registrar parking page.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

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).

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 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. It is well established that the Top-Level Domain ("TLD") – in the present case ".top" –maybe disregarded in the assessment under paragraph 4(a)(i) of the Policy. The disputed domain name includes the MICARDIS trademarks in its entirety, preceded by the generic term "buy". According to standard case law under the Policy an addition of a generic term to a trademark does not take away the similarity between a domain name and a trademark. The Panel therefore finds that the disputed domain is confusingly similar to the MICARDIS trademarks.

2. The Complainant must make a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455). The Panel takes note of the various allegations of the Complaint and in particular, that that the Respondent has not been commonly known by the disputed domain name, is not related in any way with the Complainant, and does not perform any activity for and has no business with the Complainant. These allegations of the Complainant remain unchallenged. Consequently, there is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name.

3. The Complainant showed that it has registered the MACADIS trademarks over three decades before the Respondent registered the disputed domain name and the Complainant undisputedly alleged that the MICARDIS trademark had a reputation at the time the Respondent registered the disputed domain name. As the MICARDIS trademarks also have "no sensible meaning independent of their association with the Complainant" (Kiwibank Limited v. Privacy Protection / Brands Delight / Prime Market Case, WIPO Case No. D2022-1041), the Panel considers it likely that the Respondent registered the disputed domain name because it was familiar with the MICARDIS trademarks. Consequently, the Panel is satisfied the disputed domain name was registered in bad faith.
According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 3.3, "[…] panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding," and that the circumstances of the case determine if the domain name is used in bad faith. In this matter the Panel is satisfied that the disputed domain name is also used in bad faith because the disputed domain name is identical to the MICARDIS trademarks and was registered while the Respondent was likely aware of the MICARDIS trademarks which is undisputedly well-known, and the Respondent used a privacy shield to conceal its identity, whereas the Panel considers any good faith use to which the disputed domain name may be put implausible.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BUYMICARDIS.TOP**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2022-09-21

Publish the Decision