

Decision for dispute CAC-UDRP-105065

Case number CAC-UDRP-105065

Time of filing 2022-12-20 09:42:27

Domain names micardisbuy.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

Name Franklin M. Ames

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 registered owner of the following international trademarks for "MICARDIS" for goods in class 5:

- n° 523578 registered since 1988-05-18
- n° 691750 registered since 1998-03-13

FACTUAL BACKGROUND

1. The Complainant is German family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer in the German city of Ingelheim am Rhein. It currently employs roughly 52,000 employees worldwide. One of the products commercialized by the Complainant is MICARDIS, a medicine prescribed for the treatment of hypertension.

2. It results from the registrar verification that the current registrant registered the disputed domain name on 17 September 2022. The Respondent's data were originally "redacted for privacy".

3. According to the undisputed evidence provided by the Complainant, the disputed domain name resolves to a registrar parking page.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, paragraph 4(a)(i) of the Policy.

The Complainant's registered trademark MICARDIS is identically included in the disputed domain name.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark for purposes of the first element where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (cf. section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")). This Panel shares the same view and notes that - in the case at hand - the disputed domain name contains the Complainant's registered trademark MICARDIS, which is placed at the beginning of the disputed domain name where it is perfectly recognizable. The combination with the descriptive term "buy" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark.

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record showing could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner. Furthermore, the Panel considers the disputed domain name's use for a registrar parking page as being use for commercial content. Such use excludes, in the Panel's view, any non-commercial use in the sense of paragraph 4(c)(iii) of the Policy from the outset. Finally, said use for commercial web content does - in the Panel's view and in the absence of any explanations to

the contrary - not represent a bona fide offering (pursuant to paragraph 4(c)(i) of the Policy). This use rather capitalizes on the reputation and goodwill of the Complainant's marks.

3.

Finally, the Panel finds that the disputed domain name has also been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has registered the disputed domain name, which fully includes the Complainant's trademark MICARDIS in order to intentionally attempt to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy). Considering the fact that the disputed domain name identically includes that distinctive trademark suggests the Respondent's awareness of the trademark. Finally, the Panel also considered the following additional relevant factors:

(i) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use,

(ii) the Respondent hiding his identity behind a privacy shield,

(iii) the implausibility of any good faith use to which the disputed domain name may be put and

(iv) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the Czech Arbitration Court's inability to deliver its written communications under the emails indicated.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. micardisbuy.top: Transferred

PANELLISTS

Name	Tobias Malte Müller
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DATE OF PANEL DECISION **2023-01-30**

Publish the Decision
