

Decision for dispute CAC-UDRP-105835

Case number	CAC-UDRP-105835
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Time of filing	2023-10-02 10:42:35
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Domain names	actilyse.net
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Case administrator

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

Organization	Boehringer Ingelheim International GmbH
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	QINGRU WU
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <actilyse.net> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- International trade mark registration no. 493578, registered on 2 May 1985, for the mark ACTILYSE, in class 5 of the Nice Classification.

(hereinafter, the Complainant's trade mark; the ACTILYSE trade mark; and the trade mark ACTILYSE interchangeably).

The disputed domain name was registered on 18 September 2023 and, at the time of writing of this decision, it resolves to a website offering the disputed domain name for sale ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is a German family-owned pharmaceutical group of companies founded in 1885 by Albert Boehringer in Ingelheim am Rhein.

The Complainant has become a global research-driven pharmaceutical enterprise and has today approximately 140 affiliated companies and 53,000 employees worldwide. The Complainant reached a global revenue of c. EUR 24.1bn in 2022.

The Complainant avers that ACTILYSE is a 'fibrinolytic treatment of acute ischaemic stroke, acute myocardial infarction, acute massive pulmonary embolism and Fibrinolytic treatment of occluded catheters'.

In addition to the trade mark set out in the above section 'Identification of rights', and many more in its portfolio, the Complainant owns numerous domain names containing the trade mark ACTILYSE, most notably <actilyse.com> (registered on 7 October 1996).

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant states that the disputed domain name incorporates the trade mark ACTILYSE in its entirety, and that the generic Top-Level Domain (gTLD) <.net> is a standard registration requirement, such that it should be disregarded in the assessment of confusing similarity.

The Complainant therefore concludes that the disputed domain name is identical and confusingly similar to the Complainant's trade mark.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent is not affiliated with, nor authorised by, the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with, the Respondent. The Respondent has not been authorised or licensed by the Complainant to make any use of the Complainant's trade mark ACTILYSE nor to apply for registration of the disputed domain name by the Complainant.

The Complainant further states that the disputed domain name resolves to a parking page where it is offered for sale for USD 1450 and such use evidences the Respondent's lack of rights or legitimate interests.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant avers that the ACTILYSE was registered numerous years before the registration of the disputed domain name and that a Google search for the term 'actilyse' would have revealed several results all of which relating to the Complainant. Therefore, the Complainant states that it is inconceivable that the Respondent was unaware of the Complainant at the time of registration of the disputed domain name.

Use

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs (USD 1450). The Complainant further avers that an offer to sell a disputed domain name in excess of out-of-pocket costs may evidence bad faith under paragraph 4(b)(i) of the UDRP Policy.

In view of the above, the Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'ACTILYSE' since 1985.

The disputed domain name is <actilyse.net> was registered in 2023, and it consists of the term 'actilyse'.

The Complainant's trade mark ACTILYSE is wholly incorporated into the disputed domain name. Furthermore, and as rightly asserted by the Complainant, the gTLD <.net> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since 1985;
- The Complainant is the owner of the domain name <actilyse.com>, which was registered in 1996;
- The disputed domain name <actilyse.net> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- The Respondent's default in this UDRP administrative proceeding; and
- The Respondent's e-mail address on the Whois record [premiumdomainseller@****] suggests that the Respondent is likely to have registered the disputed domain name in an attempt to target the Complainant.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(i) of the UDRP Policy, which provides as follows:

'(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name.'

At the time of writing this decision, the disputed domain name resolves to a website offering the disputed domain name for sale (USD 1450), which the Panel considers to be in excess of the documented out-of-pocket costs directly related to the disputed domain name. The Respondent's behaviour would consequently fall in the realm of paragraph 4(b)(i) of the UDRP Policy.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **actilyse.net**: Transferred

PANELLISTS

Name Gustavo Moser

DATE OF PANEL DECISION 2023-10-25

Publish the Decision