Decision for dispute CAC-UDRP-106725

Case number	CAC-UDRP-106725
Time of filing	2024-07-18 09:42:48
Domain names	spiriva1day.top

Case administrator

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

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co KG

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Billi Villi

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <spiriva1day.top> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

For the purpose of this UDRP administrative proceeding, the Complainant relies upon the following registered trade marks:

• International trade mark registration no. 692353, registered on 1 April 1998, for the word mark SPIRIVA, in class 5 of the Nice Classification;

• EU trade mark registration no. 000789529, registered on 16 June 1999, for the word mark SPIRIVA, in class 5 of the Nice Classification.

(Hereinafter referred to as 'the Complainant's trade mark' or 'the Complainant's trade mark SPIRIVA').

The disputed domain name was registered on 10 May 2024. At the time of writing of this decision, it resolves to an active website, the particulars of which are discussed in the subsequent sections of this decision (for present purposes, '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. It has become a global research-driven pharmaceutical enterprise and has today approximately 53,500 employees worldwide. The Complainant achieved net sales of EUR 25.6bn in 2023.

The Complainant commercialises capsules of tiotropium bromide under the trade mark SPIRIVA, which is an anticholinergic bronchodilator used in the management of chronic obstructive pulmonary disease.

In addition to the non-exhaustive list of trade marks mentioned in the above section 'Identification of rights', the Complainant informs that it is also the owner of numerous domain names which bear the sign 'spiriva', most notably <spiriva.com> (registered in 1999).

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

A.1 The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's trade mark SPIRIVA. The additional terms '1' and 'day' in the disputed domain name string are insufficient to escape a finding of confusing similarity with the Complainant's trade mark SPIRIVA. In addition, the Top-Level Domain ('TLD') <.top> does not change the overall impression of affiliation with the Complainant's trade mark.

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. The Complainant has not authorised the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant further submits that the Respondent is not known by the disputed domain name. Furthermore, the disputed domain name redirects to an information page regarding SPIRIVA inhalers with links to an online store selling competing goods, and such use is neither bona fide nor legitimate non-commercial or fair use.

A.3 The Respondent registered and is using the disputed domain name in bad faith

A.3.1 Registration

The Complainant submits that the trade mark SPIRIVA was registered many years before the registration of the disputed domain name; that the term 'spiriva' has no meaning, except in relation to the Complainant; and that a search for the terms 'spiriva 1 day' would have revealed results mostly related to the Complainant. Moreover, the Respondent's website contains information about SPIRIVA inhalers, and the Respondent is in the business of sale of pharmaceuticals.

A.3.2 Use

The Complainant avers that the Respondent uses the disputed domain name to deceive Internet users seeking the Complainant's product by creating a likelihood of confusion with the Complainant, thereby generating revenue from the sales of unrelated or competing pharmaceuticals. The Respondent's conduct would fall within the remit of paragraph 4(b)(iv) 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. Hence, 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. UDRP Threshold

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 grounds which the Complainant must establish to succeed:

> 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 has UDRP-relevant rights in the registered trade mark SPIRIVA since at least 1998.

The Panel notes that the Complainant's trade mark SPIRIVA is wholly incorporated into the disputed domain name <spiriva1day.top>. The adjacent keyboard number '1' and the word ‘day’ in the disputed domain name string have no bearing on the recognisability of the Complainant's trade mark. Moreover, TLDs are typically immaterial to the test under this UDRP Policy ground (see eg WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0'), paragraph 1.11).

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 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, the record fails to demonstrate that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is furthermore unconvinced that, before any notice of this UDRP administrative proceeding, 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 defaulted in this UDRP administrative proceeding, and 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

The Panel notes a number of factors which point towards a finding of bad faith registration.

First, the Complainant's trade mark SPIRIVA predates the registration of the disputed domain name by over two decades. Besides, the disputed domain name bears the trade mark SPIRIVA in its string, coupled with a keyboard number and a generic word which are immaterial to affect the recognisability of the Complainant's trade mark. The Panel also notes that the Complainant has held the domain name <spiriva.com> since 1999. Besides, to the best of the Panel's knowledge, the word 'spiriva' has no known meaning in France or in the United States. Hence, the Panel has no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

With respect to the use in bad faith, the Complainant submits that the Respondent may have engaged in the conduct set forth in paragraph 4(b)(iv) of the UDRP Policy:

> '(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location'.

At the time of writing, the disputed domain name resolves to a website which contains information about SPIRIVA inhalers as well as a link – at the top of the website – from which SPIRIVA inhalers may be purchased. Nonetheless, when clicking on the link, Internet users are redirected to an unrelated website on which SPIRIVA inhalers are offered for sale alongside other inhalers, some of which appear to be connected with the Complainant's competitors. The Panel has considered the available record and found convincing evidence that the Respondent would have purposefully used the trade mark SPIRIVA in the disputed domain name string and on the Respondent's website to deceive Internet users into a mistaken belief of affiliation or connection with the Complainant. The Respondent's behaviour would consequently fall within the reach of paragraph 4(b)(iv) of the UDRP Policy.

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

E. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <spiriva1day.top> 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. **spiriva1day.top**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-08-27

Publish the Decision