

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Chen Li and Goran Gichevski
Case No. D2023-3137

1. The Parties

The Complainant is Novartis AG, Switzerland, represented by Greenberg Traurig, LLP, United States of America (“United States”).

The Respondents are Chen Li, United Kingdom and Goran Gichevski, Bulgaria.

2. The Domain Names and Registrar

The disputed domain names <aclastastore.com>, <arcaptastoreonline.com>, <azoptstoreonline.com>, <buyafinitoronline.com>, <buydiovanonline.com>, <buyentrestoonline.com>, <buyestradotonline.com>, <buyexelonnow.com>, <buyexjadeonline.com>, <buyfamvironline.com>, <buyfemaraonline.com>, <buygalvusonline.com>, <buygliveonline.com>, <buyhycamtinonline.com>, <buyjakavionline.com>, <buynevanac.com>, <buypatadayonline.com>, <buyrevoladeonline.com>, <buysandimmunonline.com>, <buysandostatinonline.com>, <buytasignaonline.com>, <buytobrexonline.com>, <buytravatanonline.com>, <buytykerbonline.com>, <buyvoltarenonline.com>, <buyvotrientonline.com>, <buyvoveranonline.com>, <buyvymadaonline.com>, <buyxiidraonline.com>, <certicanmgpharmacyonline.com>, <patanolstore.com>, <tobrexshop.com>, and <zaditenstore.com> are registered with Stork R, informacijske storitve, d.o.o. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 24, and August 4, 2023, the Registrar transmitted by email to the Center its verification responses confirming that the Respondents are listed as the registrant and providing the contact details. In response to the Center’s notification regarding the file size, the Complainant re-submitted annexes to the Complaint on August 15, 2023.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on September 7, 2023.

The Center appointed John Swinson as the sole panelist in this matter on September 28, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Due to an apparent issue with the notification, the Panel issued the Procedural Order No.1 on October 30, 2023, granting the Respondents a five-day period (through November 4, 2023) to indicate whether they wish to participate to this proceeding. The Respondents did not send any email communication by the specified due date.

4. Factual Background

The Complaint concerns 33 disputed domain names.

The Complainant is a large, global pharmaceutical company that is publicly traded and listed on the New York Stock Exchange.

The Complainant's medicines treat major diseases, from cancer and heart disease to rare genetic disorders, and are distributed in approximately 140 countries around the world. These medicines include the following: Aclasta, Afinitor, Arcapta, Azopt, Certican, Diovan hct, Entresto, Estradot, Exelon, Exjade, Famvir, Femara, Galvus, Glivec, Hycamtin, Jakavi, Nevanac, Pataday, Patanol, Revolade, Sandimmun, Sandostatin, Tobrex, Voltaren, Votrient, Voveran, Vymada, Xiidra, Zaditen, Travatan, Tasigna, and Tykerb.

The Complainant owns the following trademark registrations:

Registered Trademark	Jurisdiction	Registration No.	Registration Date
ACLASTA	International	785060	July 30, 2002
NEVANAC	United States	3149473	September 26, 2006
PATANOL	United States	2113082	November 11, 1997
TOBEX	United States	1189092	February 9, 1982
ZADITEN	International	295855	April 2, 1965
AFINITOR	United States	3216047	March 6, 2007
ARCAPTA	International	1313519	August 19, 2016
AZOPT	United States	2261307	July 13, 1999
CERTICAN	International	704670	December 4, 1998
DIOVAN	International	628497	November 2, 1994
ENTRESTO	United States	4929041	March 29, 2016
ESTRADOT	International	779341	April 24, 2002
EXELON	United States	2112658	November 11, 1997
EXJADE	United States	2875038	August 17, 2004
FAMVIR	United States	1882779	March 7, 1995
FEMARA	United States	2182663	August 18, 1998
GALVUS	International	742832	September 12, 2000
GLIVEC	International	649355	January 22, 1996
HYCAMTIN	United States	2030440	January 14, 1997
JAKAVI	International	936263	August 31, 2007

PATADAY	United States	4332241	May 7, 2013
REVOLADE	International	860890	July 12, 2005
SANDIMMUN	International	461494	May 12, 1981
SANDOSTATIN	United States	1412956	October 14, 1986
TASIGNA	United States	3635627	June 9, 2009
TRAVATAN	United States	2496583	October 9, 2001
TYKERB	United States	2895608	October 19, 2004
VOLTAREN	United States	0960282	June 5, 1973
VOTRIENT	United States	3728444	December 22, 2009
VOVERAN THERMAL	Switzerland	582413	February 2, 2009
VYMADA	International	1108320	January 13, 2012
XIIDRA	International	1350341	March 18, 2017

This case concerns two named Respondents. The first named Respondent, Chen Li, is listed as the registrant of the following disputed domain names:

- <aclastastore.com>
- <buynevanac.com>
- <patanolstore.com>
- <buytobrexonline.com>
- <tobrexshop.com>
- <zaditenstore.com>

These six disputed domain names were registered on December 3, 2021.

The second named Respondent, Goran Gichevski is listed as the registrant of all the other disputed domain names. These other disputed domain names were registered on February 9, 2022.

At the present time, the disputed domain names do not resolve to an active website.

In the past, the disputed domain names resolved to websites purporting to market and sell the Complainant's products.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the websites at the disputed domain names were apparently selling counterfeit pharmaceutical products.

B. Respondents

The Respondents did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Consolidation of Multiple Respondents

The Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not respond or deny this allegation.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names were registered using the same Registrar, on two dates, and majority of the disputed domain names have the same structure in that each incorporates one of the Complainant's pharmaceutical product marks, in combination with the generic terms "buy" and "online", all of the disputed domain names use one of two SSL Certificate providers, and the disputed domain names were being used in the same way in the past when they resolved to websites with highly similar content that purported to sell the Complainant's pharmaceutical products. The websites included the title "Order [Complainant Trademark] Generic and Alternative Brand Name Online" or "Order [Complainant Trademark] Supply Online"). Once this Complaint was filed, all the websites at the disputed domain names were taken down presumably by the Respondent.

These circumstances show that it is more likely than not that the disputed domain names are under common control. The Respondents have not advanced any reasons why it may not be equitable to allow the consolidation of the dispute domain names. Consolidation would lead to greater procedural efficiency, and the Panel is not aware of any reasons why the consolidation would not be fair and equitable to all parties. *Manduka LLC v. Bach Johanna, Beike Dieter, Brandt Uta, Wexler Mathias, Kalb Benjamin, and Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-3098](#)

The above satisfies the Panel that the consolidation of the Respondents and the disputes related to the disputed domain names in a single proceeding is justified and appropriate in the circumstances. Therefore, the Panel decides to allow the consolidation of the disputes in relation to all the disputed domain names in the present proceeding.

The Panel will refer to both named Respondents as the Respondent.

6.2 Substantive Issues

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The *onus* of proving these elements is on the Complainant.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademarks and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the relevant trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the relevant marks is reproduced within the disputed domain names except for the disputed domain name <buyvoveranonline.com> which incorporates the dominant feature of the Complainant's trademark VOVERAN THERMAL. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark. Accordingly, the disputed domain names are confusingly similar to the relevant marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Each of the disputed domain names incorporate one of the Complainant's trademarks in full or a dominant feature of the Complainant's trademark and adding various terms such as "buy", "store", "now", "online", "mg", "shop", and "pharmacy". While the addition of such other terms may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the relevant marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain names.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Complainant asserts that to the extent that the websites at the disputed domain names are selling products, it is believed by the Complainant that the medicines they offer for sale are most likely falsified medicines. See *Novartis AG v. Whois Privacy Corp., Domain Admin*, WIPO Case No. [D2017-0566](#) (finding that where the disputed domain name resolved to a website which offered allegedly possible counterfeit drugs under the Complainant's mark without prescription which could be a hazard to public health, is in no way a legitimate noncommercial or fair use of the disputed domain name). The Respondent did not attempt to rebut this allegation.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

In the present case, it is clear that the Respondent was aware of the Complainant and the Complainant's portfolio of pharmaceutical products. For the most part, the Complainant's trademarks are all unique and unusual terms. The Respondent has registered the 33 disputed domain names among which each of the 31 disputed domain names includes a different trademark of the Complainant, and the remaining two disputed domain names include another trademark of the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith.

The Respondent's use of the disputed domain names to divert consumers to websites that most likely are promoting counterfeit products of the Complainant, or at a minimum, the sale of pharmaceutical products contrary to legal requirements, is evidence of conduct contrary to paragraph 4(b)(iv) of the Policy.

The Respondent has been unsuccessful in at least four prior disputes under the Policy involving similar factual scenarios, including *Teva Pharmaceutical Industries Limited v. Goran Gichevski*, WIPO Case No. [D2023-1096](#). This, along with the 33 disputed domain names the subject of the present dispute, is evidence of a pattern of conduct relevant to paragraph 4(b)(ii) of the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

The fact that the disputed domain names do not currently resolve to an active website does not prevent a finding of bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names:

<aclastastore.com>, <arcaptastoreonline.com>, <azoptstoreonline.com>, <buyafinitoronline.com>, <buydiovanonline.com>, <buyentrestoonline.com>, <buyestradotonline.com>, <buyexelonnow.com>, <buyexjadeonline.com>, <buyfamviroonline.com>, <buyfemaraonline.com>, <buygalvusonline.com>, <buygliveconline.com>, <buyhycamtinonline.com>, <buyjakavionline.com>, <buynevanac.com>, <buypatadayonline.com>, <buyrevoladeonline.com>, <buysandimmunonline.com>, <buysandostatinonline.com>, <buytasignaonline.com>, <buytobrexonline.com>, <buytravatanonline.com>, <buytykerbonline.com>, <buyvoltarenonline.com>, <buyvotrientonline.com>, <buyvoveranonline.com>, <buyvymadaonline.com>, <buyxiidraonline.com>, <certicanmgpharmacyonline.com>, <patanolstore.com>, <tobrexshop.com>, and <zaditenstore.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: November 6, 2023