

## **ADMINISTRATIVE PANEL DECISION**

Ferring B.V. v. Domain Admin / Goran Gichevski  
Case No. D2022-2008

### **1. The Parties**

The Complainant is Ferring B.V., Netherlands, represented by Jacobacci Avocats, France.

The Respondent is Domain Admin, Bulgaria / Goran Gichevski, Bulgaria.

### **2. The Domain Names and Registrar**

The disputed domain names <buymenogononline.com>, <buymenopurnow.com>, and <buypentasanow.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 June 2, 2022. On June 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 13, 2022.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 5, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on July 8, 2022. 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.

#### **4. Factual Background**

The disputed domain names were registered on February 9, 2022 (Annex 1 to the Complaint).

The Complainant is part of the Ferring group which is a biopharmaceutical group, founded 72 years ago and is active in numerous countries around the world with a global turnover of more than EUR 2 billion in 2021 (Annex 3 of the Complaint).

The Complainant is the owner of various trademark registrations containing the marks MENOPUR, MENOLOGON, and PENTASA with regard to medicine (Annexes 6, 7 and 11, 12 and 15, 16 to the Complaint).

- European Union Trade Mark registration MENOPUR No. 008695694 filed on November 18, 2009, and registered on April 28, 2010, duly renewed, and covering the “pharmaceutical products and substances” in class 5 of the Nice classification;
- European Union Trade Mark registration MENOLOGON No. 008695686 filed on November 18, 2009, and registered on April 28, 2010, duly renewed, and covering the “pharmaceutical products and substances” in class 5 of the Nice classification;
- European Union Trade Mark registration PENTASA No. 008695785 filed on November 18, 2009, and registered on April 20, 2010, duly renewed, and covering the “pharmaceutical preparations for the prevention and treatment of diseases and disorders of the gastro-intestinal tract” in class 5 of the Nice classification.

Menopur is a medicine indicated for the treatment of infertility; Menogon was the first product launched by the Complainant for the treatment of infertility, and Pentasa is a gastroenterology medicine indicated for the treatment and long-term management of inflammatory bowel diseases (Annexes 5, 10, and 14 to the Complaint).

The Complainant moreover owns several domain names containing its MENOPUR, MENOLOGON and PENTASA trademarks, especially <menopur.com>, <buymenopur.com>, and <buymenopuronline.com> as well as <menogon.com>, and <pentasa.com>, or <buypentasaonline.com> (Annexes 8, 9, 13, and 17 to the Complaint).

Currently, the disputed domain names are not actively used.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant is part of the FERRING group which is a biopharmaceutical group, founded 72 years ago, known all over the world. FERRING group currently owns subsidiaries operating in nearly 65 countries and markets its products in 110 countries around the world. In 2021, the group made a global turnover of more than EUR 2 billion.

The Complainant is the owner of 235 trademark registrations/applications for MENOPUR, and notably the European Union Trade Mark registration MENOPUR No. 008695694 filed on 18 November, 2009, and registered on 28 April, 2010, duly renewed, and covering the “pharmaceutical products and substances” in class 5 of the Nice classification. The Complainant also owns 49 domain names for MENOPUR registered since numerous years, and notably <menopure.com> used to display information on this medicine, the characteristics of the treatment, and injection training; it also owns <buymenopur.com> and <buymenopureonline.com>.

The Complainant is the owner of 112 trademark registrations/applications for MENOGON, and notably the European Union Trade Mark registration MENOGON No. 008695686 filed on 18 November, 2009, and registered on 28 April, 2010, duly renewed, and covering the “pharmaceutical products and substances” in class 5 of the Nice classification. The Complainant also owns 20 domain names for MENOGON registered since numerous years, and notably <menogon.com>.

The Complainant is the owner of 130 trademark registrations/applications for PENTASA, and notably the European Union Trade Mark registration PENTASA No. 008695785 filed on 18 November, 2009, and registered on 20 April, 2010, duly renewed, and covering the “pharmaceutical preparations for the prevention and treatment of diseases and disorders of the gastro-intestinal tract” in class 5 of the Nice classification. The Complainant also owns 54 domain names for PENTASA registered since numerous years, and notably <pentasa.com> and <buypentasaonline.com>.

The Complainant’s trademarks are highly distinctive in relation to the goods covered.

The disputed domain names are confusingly similar to the Complainant’s trademarks and prior rights in MENOPUR, MENOGON, and PENTASA.

The Complainant never authorized the Respondent or any other person to register the disputed domain names containing the marks MENOPUR, MENOGON, and PENTASA. The Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Respondent has registered and used the disputed domain names in bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that

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

### **A. Identical or Confusingly Similar**

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademarks MENOPUR, MENOGON, and PENTASA.

The Panel finds that the disputed domain names are confusingly similar to the Complainant’s registered marks MENOPUR, MENOGON, and PENTASA since they entirely contain these trademarks and only adds the prefix “buy”, and the suffix “now”, or “online”.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms whether descriptive, geographical, pejorative, meaningless, or otherwise will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

Finally, it has also long been held that generic Top-Level Domains (“gTLDs”) are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain names, comprising the Complainant’s mark in its entirety together with the terms “buy” before the trademarks, and the suffix “online”, or “now”, cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)), both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the highly distinctive registered trademarks MENOPUR, MENOGON, and PENTASA, which are registered and used in many jurisdictions around the world. Moreover, the Complainant registered and is using various domain names containing its MENOPUR, MENOGON, and PENTASA trademarks e.g. <menopure.com>, <menogon.com>, <pentasa.com>, <buymenopur.com>, and <buymenopuronline.com> as well as <buypentasaonline.com> among others.

The disputed domain names were registered long after the Complainant registered its MENOPUR, MENOGON, and PENTASA trademarks. It is inconceivable for this Panel that the Respondent registered or has used the disputed domain names without knowledge of the Complainant’s rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names incorporate the Complainant’s distinctive trademarks entirely together with the suffix “buy”, and the prefix “online”, or “now” which in fact even strengthens the impression that the Respondent must have known the marks MENOPUR, MENOGON, and PENTASA when registering the disputed domain names.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

(ii) Although there is no evidence that the disputed domain names are being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra*

*Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel also concludes that the present passive holding of the disputed domain names, constitutes bad faith use, putting emphasis on the following:

- the Complainant's trademarks MENOPUR, MENOGON, and PENTASA are highly distinctive with a strong online presence around the world for years;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain names;
- the disputed domain names incorporate the Complainant's trademark in its entirety, and are thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);
- the disputed domain names moreover contain the prefix "buy", and the suffix "online", or "now" which suggest that the disputed domain names belong to the Complainant, or that the Respondent is acting on behalf or with the permission of the Complainant which is not the case; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

## **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, <buymenogononline.com>, <buymenopurnow.com>, and <buypentasanow.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: July 19, 2022