

ADMINISTRATIVE PANEL DECISION

Merck KGaA v. Vasile Rusu
Case No. D2022-3593

1. The Parties

The Complainant is Merck KGaA, Germany, represented by Bettinger Scheffelt Partnerschaft mbB, Germany.

The Respondent is Vasile Rusu, Republic of Moldova.

2. The Domain Name and Registrar

The disputed domain name <glucophage.guru> (the “Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 amendment to the Complaint on October 5, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on October 31, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates its business in more than 180 countries through over 250 affiliated companies. The Complainant has been manufacturing and marketing the drug Glucophage (active ingredient: metformin) since 1991. It is treatment for type 2 diabetes. Today Glucophage is available in over 100 countries. In 2021, annual sales generated with Glucophage amounted to EUR 864 million.

The Complainant owns numerous trademark registrations for GLUCOPHAGE, such as European Union Trade Mark Registration No. 001184357 registered May 17, 2000, and International Trademark Registration No. 216005 registered December 31, 1958. The Complainant is also the registrant of various domain names, such as <glucophage.com> and <glucophage.info>.

The Domain Name was registered on June 23, 2022. It has redirected to a website offering description of the Glucophage active ingredient metformin and various hyperlinks to online pharmacy.

5. Parties' Contentions

A. Complainant

The Complainant documents registered trademark rights and argues that the Domain Name is well-known in a multitude of countries outside North America. The Domain Name incorporates the whole of the Complainant's trademark and is confusingly similar to the Complainant's trademarks in accordance with paragraph 4(a)(i) of the Policy.

The Complainant argues that it is sufficient for the Complainant to produce *prima facie* evidence to shift the burden of production to the Respondent. The Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant's trademark. There is no evidence to support that the Respondent is commonly known by the Domain Name. The Respondent cannot establish rights or legitimate interests in the Domain Name, as the Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent's use for a website with various hyperlinks to an online pharmacy cannot establish any rights or legitimate interests in the Domain Name.

The Complainant submits that the Respondent knew of the Complainant's trademark when the Respondent registered the Domain Name. The Respondent's use of the Domain Name to redirect an online pharmacy was clearly to attract Internet users to the site, for profit, based on their confusing the Domain Name with the Complainant's trademark. Once on the Respondent's page, users may click on pay-per-click links, which results in click-through fees and thus in a commercial benefit for the Respondent. The Respondent has intentionally created a likelihood of confusion with the Complainant's trademark for the Respondent's financial gain. Furthermore, the Respondent's failure to respond to the Complainant's contentions constitutes in the circumstances of this case an additional indication of the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established rights in its trademark GLUCOPHAGE. The Domain Name is identical to the Complainant's trademark.

For the purposes of assessing confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") as it is viewed as a standard registration requirement, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 1.11.1.

The Panel finds that the Domain Name is identical to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent is not affiliated with nor authorized by the Complainant. There is no evidence that the Respondent is commonly known by the Domain Name. The Respondent cannot establish rights in the Domain Name, as it has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. On the contrary, the use suggests bad faith.

The Panel finds that the Complainant has made out a *prima facie* case showing that the Respondent has no rights or legitimate interests in the Domain Name, which has been un rebutted by the Respondent.

In addition, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's trademarks were registered before the registration of the Domain Name. The Domain Name is identical to the Complainant's trademark. The Domain Name has redirected to a webpage offering/alleging to offer similar products as those offered by the Complainant. Based on the above, it is highly probable that the Respondent was aware of the Complainant's trademark when the Respondent registered the Domain Name.

The misappropriation of a well-known trademark as domain name may be an indication of bad faith. The Domain Name seems to be registered to attract Internet users by misleading them into believing that the Domain Name is somehow connected to the Complainant. The Respondent has not provided any evidence of good faith use, and as mentioned above, the Respondent's use of the Domain Name further underlines bad faith.

The Panel finds that the Domain Name was registered and is being used in bad faith, within the meaning of the 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 Domain Name <glucophage.guru> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: November 3, 2022