

## **ADMINISTRATIVE PANEL DECISION**

**Astellas Pharma Inc. v. Goran Gichevski**

**Case No. D2023-4188**

### **1. The Parties**

The Complainant is Astellas Pharma Inc., Japan, represented by Demys Limited, United Kingdom.

The Respondent is Goran Gichevski, Bulgaria.

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

The disputed domain names <buymyrbetriqonline.com>, <buyprografonline.com>, <buyvesicareonline.com>, and <buyxtandionline.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 October 9, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 11, 2023, 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 (WHOIS Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 2023, 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 October 16, 2023.

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 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2023. The Registrar sent an email communication to the Center on October 18, 2023. On October 19, 2023, the Complainant requested to suspend the proceedings to explore settlement options. On October 19, 2023, the Center suspended the proceedings until November 18, 2023. On November 2, 2023, based on the Complainant’s request, the proceedings were reinstated. The Response due date was November 20, 2023. The Respondent did not submit a Response.

On November 24, 2023, the Center informed the Parties that it will proceed to panel appointment.

The Center appointed Kaya Köklü as the sole panelist in this matter on November 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.

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

The Complainant is a widely known multinational pharmaceutical company with its headquarter in Tokyo, Japan.

The Complainant is the owner of the VESICARE, XTANDI, MYRBETRIQ, and PROGRAF trademarks (Annex 11 to the Complaint). Among others, the Complainant is the owner of the United States Trademark No. 2535639, registered on February 5, 2002, for VESICARE, the United States Trademark No. 4263728, registered on December 25, 2012, for MYREBETRIQ, the International Trademark No. 1109736, registered on December 27, 2011, for XTANDI, and the United States Trademark No. 1867420, registered on December 13, 1994, for PROGRAF, all of them covering protection for pharmaceutical preparations and substances (Annex 11 to the Complaint). The Complainant is using these trademarks for its pharmaceutical products for many years.

The Respondent is reportedly located in Bulgaria. He has apparently been involved in other UDRP disputes as a respondent before, all of them decided against him. For instance, see *Teva Pharmaceutical Industries Limited v. Goran Gichevski*, WIPO Case No. [D2023-1096](#), and *Teva Pharmaceutical Industries Limited v. Goran Gichevski*, WIPO Case No. [D2022-4220](#).

The disputed domain names were all registered on February 9, 2022.

In accordance with evidence presented by the Complainant, each of the disputed domain names resolved to websites in English language that prominently used the Complainant's trademarks, without providing a visible disclaimer describing the (lack of) relationship between the Parties (Annex 8 to the Complaint). At each of the associated websites, pharmaceutical products of the Complainant (either counterfeit or unauthorized parallel imports) under the above-mentioned trademarks were purportedly offered to Internet users (Annex 9 to the Complaint).

At the date of this Decision, the disputed domain names no longer resolve to active websites.

#### **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.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, the Center received an email communication from the Registrar indicating: "Our reseller of those domains just sent us the following message: We read the documents and we concluded that all of these domains in the complaint can be transferred to the Complainant." However, a signed standard settlement form was never returned by the Respondent.

## 6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

### 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 trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the VESICARE, XTANDI, MYRBETRIQ, and PROGRAF trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of each of these marks is reproduced within the respective disputed domain name. Accordingly, the disputed domain names are confusingly similar to the VESICARE, XTANDI, MYRBETRIQ, and PROGRAF trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "buy" as a prefix and "online" as a suffix, 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 mark 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 name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Panel particularly finds that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*") and thus is not entitled to use the disputed domain names accordingly. The criteria as set forth in *Oki Data* are apparently not fulfilled in the present case.

In this regard, the Panel notes that the websites, which were linked to the disputed domain names did not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the respective website associated to each of the disputed domain names was operated by the Complainant or at least with its authorization. In addition, the Panel notes that each of the website at the disputed domain names purportedly offered for sale pharmaceutical products which are prescription drugs and as such not available over the counter, hence the Panel believes that the products were most likely counterfeit or at least unauthorized parallel imports (Annex 9 to the Complaint). In view of the Panel, also the nature of each disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of [WIPO Overview 3.0](#).

In view of the Panel, all this results in an illicit use of the dispute domain names that *per se* cannot confer rights or legitimate interests upon the Respondent. See [WIPO Overview 3.0](#), section 2.13.

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

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

The Panel notes that, 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.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its VESICARE, XTANDI, MYRBETRIQ, and PROGRAF trademarks in mind when registering the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names to mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel finds that the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own websites by misleading Internet users in their false belief that the associated websites are operated or at least authorized by the Complainant, apparently for the purpose of illegally selling pharmaceuticals.

Panels have held that the use of a domain name for illegally offering pharmaceuticals constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Further, the prominent use of the Complainant's trademarks as well as the inherently misleading nature of the disputed domain names is, in view of the Panel, additional evidence that the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users by creating a likelihood of confusion with the Complainant.

Also, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions and his involvement as a respondent in previous UDRP cases (all of them decided against him; see above) as additional indications for bad faith.

The fact that the disputed domain names currently do no longer resolve to active websites does not prevent a finding of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <buymyrbetriqonline.com>, <buyprografonline.com>, <buyvesicareonline.com>, and <buyxtandionline.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: December 12, 2023