

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Animal Health France v. zheng zhou chu chang xin xi ji
shu you xian gong si
Case No. D2023-1331

1. The Parties

Complainant is Boehringer Ingelheim Animal Health France, France, represented by Nameshield, France.

Respondent is zheng zhou chu chang xin xi ji shu you xian gong si, China.

2. The Domain Name and Registrar

The disputed domain name <nexgardflea.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (“Unknown”) and contact information in the Complaint. The Center sent an email communication to Complainant on April 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 4, 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 Respondent of the Complaint, and the proceedings commenced on April 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 2, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on May 23, 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

Complainant is a large pharmaceutical research and product company making and marketing, among other things, drugs for animals.

Complainant owns numerous registrations worldwide that include its NEXGARD mark, for example International trademark number 1166496, registered in International Class 5, registered May 29, 2013 (Madrid designation of a large number of countries including China); and International trademark number 1676177, registered May 19, 2022 (designating European Union and Germany).

The disputed domain name was registered on March 25, 2023 and does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

Complainant avers that it uses its NEXGARD mark for a drug delivered in a beef-flavoured chew that kills adult fleas and ticks in dogs.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's NEXGARD trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's NEXGARD mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

Omitting the ".com" TLD from the disputed domain name, the Panel notes that Complainant's entire NEXGARD mark is included in the disputed domain name, adding only the word "flea". The Panel finds that this addition to Complainant's mark does not prevent a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar); *id.*, section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

The Panel therefore concludes that the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no Response. *Id.*

The Panel accepts Complainant's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademark in the disputed domain name. The Panel also accepts Complainant's averments that Respondent has no affiliation with Complainant and is not commonly known by the disputed domain name.

Since the record indicates that the disputed domain name does not resolve to an active webpage, the Panel also agrees with Complainant that Respondent is not, under the circumstances, making a *bona fide* use of the disputed domain name.

In light of the evidence and allegations of Complainant, the Panel holds that Respondent is not making a noncommercial legitimate or fair use of the disputed domain name and that Complainant has established a *prima facie* case. Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of Policy, paragraph 4(a) is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith. Policy, paragraph 4(b)(iv).

The record shows that Respondent registered the disputed domain long after Complainant perfected its trademark rights. The terms used to make up the disputed domain name, including the addition of the word “flea,” makes obvious that Respondent knew the nature of Complainant’s business associated with its trademarks.

The Panel finds therefore that Respondent’s registration of the disputed domain name creates a presumption of bad faith. [WIPO Overview 3.0](#), section 4.1.2 (“[T]he mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”). Having refrained from submitting a response to the Complaint, Respondent has failed to contradict that presumption, and the Panel holds that Respondent registered the disputed domain name in bad faith.

Moreover, use of the disputed name in bad faith is evidenced by Respondent’s failure to submit a response to the Complaint and Respondent’s failure to provide accurate contact details as required by Respondent’s agreement with the registrar.¹ [WIPO Overview 3.0](#), section 3.3; *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel holds therefore that Respondent registered and used the disputed domain name in bad faith, satisfying the third element under Paragraph 4(a) 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 name <nexgardflea.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: June 6, 2023

¹Notification of the Complaint by courier was not possible using the faulty registrant address details provided by Respondent, however there is no indication that the Center’s email notification was not completed.