

## ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim International GmbH v. 杨智强 (Zhi Qiang Yang)  
Case No. D2023-0132

### 1. The Parties

The Complainant is Boehringer Ingelheim International GmbH, Germany, represented by Nameshield, France.

The Respondent is 杨智强 (Zhi Qiang Yang), China.

### 2. The Domain Name and Registrar

The disputed domain name <jardiancee.com> is registered with Cloud Yuqu LLC (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 11, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 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 in English on January 13, 2023.

On January 13, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on January 19, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was February 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 9, 2023.

The Center appointed Jonathan Agmon as the sole panelist in this matter on February 17, 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, Boehringer Ingelheim International GmbH, is a German family-owned pharmaceutical group of companies with roots going back to 1885. It was founded in Ingelheim am Rhein. The Complainant is an international research-driven pharmaceutical company with roughly 52,000 employees. It specializes in human pharma, animal health and biopharmaceutical contract manufacturing. In 2021, the Complainant's net sales amounted to EUR 20.6 billion.

Jardiance (Empagliflozin) is a prescription medication which is used to treat diabetes type 2 and its complications.

The Complainant is the owner of the JARDIANCE trademark, including but not limited to:

- International Trademark registration No. 981336 for JARDIANCE registered on September 3, 2008;
- United States of America Trademark registration No. 3595152 for JARDIANCE registered on March 24, 2009;
- United Kingdom Trademark registration No. UK00800981336 for JARIDANCE registered on October 5, 2009.

The Complainant also states that it owns the domain name <jardiance.com> registered on April 30, 2008.

The disputed domain name, <jardiancee.com>, was registered on December 11, 2022. It resolves to an active website which displays pay-per-click ("PPC") links to third party websites.

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

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

The Complainant argues that the disputed domain name is confusingly similar to its JARDIANCE mark as the disputed domain name, which incorporates the JARDIANCE mark in its entirety with the addition of a single letter "e" with a generic Top-Level Domain ("gTLD") ".com", is insufficient to avoid confusing similarity.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith in order to intentionally attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of products and services represented on the Respondent's website.

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

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

## 6. Discussion and Findings

### 6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) The English language is the language most widely used in international relations and is one of the working languages of the Center;
- (ii) translating the Complaint into Chinese would cause an undue burden on the Complainant; and
- (iii) The disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain name resolves to a website in English, that the Respondent has not participated in this proceeding, and that all of the Center’s communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceeding is conducted in a timely and cost-effective manner. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

### 6.2 Substantive Issues

#### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the JARDIANCE mark.

The disputed domain name comprises the Complainant’s JARDIANCE mark in its entirety with the addition of the additional letter “e” in the disputed domain name <jardiancee.com>.

It is well established that where the 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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8. The Complainant’s JARDIANCE mark is clearly recognizable in the disputed domain name.

It is also well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element ([WIPO Overview 3.0](#), section 1.9). The disputed domain name consists of an obvious and intentional misspelling of the Complainant’s JARDIANCE mark and is confusingly similar to the Complainant’s JARDIANCE mark.

Further, it is well established that the adding of the gTLD “.com”, which is viewed as a standard registration requirement, is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

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

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name ([WIPO Overview 3.0](#), section 2.1).

The Complainant has provided evidence that it owned the JARDIANCE trademark registrations long before the date that the disputed domain name was registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant’s trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant has also provided evidence that the Respondent is not commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Although the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name, the Panel must assess the evidence provided by the Complainant to determine whether the Complainant has established that the Respondent does not possess any rights or legitimate interests in the disputed domain name. See *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#); *Bootie Brewing Company v. Deanna D. Ward and Grabebootie Inc.*, WIPO Case No. [D2003-0185](#).

Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

Panels have also recognized various situations where the use of landing pages with PPC links or advertisements might be permissible – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trademark. See [WIPO Overview 3.0](#), section 2.9. Panels should therefore decide on case-by-case basis if the PPC links would be permissible.

To this end, the Complainant’s evidence comprises a screenshot of a website showing PPC links. PPC links descriptions can appear to be non competing to the Complainant, and even be generated automatically, but the links lead to websites offering competing goods or services, e.g., at least one website that appears to offer health related information. Further, the disputed domain name does not appear to consist of a

dictionary word or phrase but an intentional misspelling of the Complainant's JARDIANCE trademark. Therefore, the use of the disputed domain name is to capitalize on the reputation and goodwill of the Complainant's mark.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

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

The complainant must show that the respondent registered and is using the domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its JARDIANCE trademark. Given that the Complainant's trademark has been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its JARDIANCE mark prior to the registration of the disputed domain name. The disputed domain name incorporates the Complainant's JARDIANCE mark in its entirety with the additional letter "e".

Given the circumstances of this case, the Panel finds an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)).

The Complainant has also submitted evidence that the disputed domain name resolves to a parked page with commercial PPC links, some of which lead to websites offering health related information. The Complainant contends that the Respondent has attempted to use the Complainant's trademark to attract Internet users to his own website, which constitutes bad faith registration (see *StudioCanal v. Registration Private, Domains by Proxy, LLC/Sudjam Admin, Sudjam Admin, Sudjam LLC*, WIPO Case No. [D2018-0497](#)).

It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's marks. This is another indication of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name is used to redirect Internet users to a website with PPC links that some of which lead to websites offering health related information, the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel finds that the disputed domain name was registered and is being used in bad faith.

### **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 <jardiancee.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: March 3, 2023