

ADMINISTRATIVE PANEL DECISION

Laboratoires Fill-Med v. 瑞倩 (rui qian), 广州瑞倩医疗生物科技有限公司
(guang zhou rui qian yi liao sheng wu ke ji you xian gong si)
Case No. D2022-0583

1. The Parties

The Complainant is Laboratoires Fill-Med, France, represented by Ebrand Services, France.

The Respondent is 瑞倩 (rui qian), 广州瑞倩医疗生物科技有限公司 (guang zhou rui qian yi liao sheng wu ke ji you xian gong si), China.

2. The Domain Names and Registrars

The disputed domain name <fillmed.net> is registered with Bizcn.com, Inc., and the disputed domain name <fillmedvip.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (collectively “the Registrars”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2022. On February 21, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On February 22, 2022, the Registrars transmitted by email to the Center their verification responses 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 February 22, 2022 providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on February 25, 2022.

On February 22, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on February 22, 2022. 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 proceeding commenced on February 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 21, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on March 29, 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

A. Complainant

The Complainant is a company incorporated in France and a manufacturer and seller, since 1978, of anti-ageing and aesthetic cosmetic products, under the trade mark FILL-MED (the "Trade Mark").

The Complainant is the owner of registrations in jurisdictions worldwide for the Trade Mark, including International registration No. 1351198, registered on March 13, 2017.

The Complainant is also the owner of several domain names containing the Trade Mark, including <fillmed.com>, registered on October 25, 2017; <fillmed.cn>, registered on May 7, 2018; and <fillmed.com.cn>, registered on May 7, 2018.

The Complainant sells its products under the Trade Mark in China via its exclusive distributor.

B. Respondent

The Respondent is a company incorporated in Guangzhou, China.

C. The Disputed Domain Names

The disputed domain names were both registered on July 30, 2018.

D. Use of the Disputed Domain Names

The disputed domain names resolve to the same website, which offers for sale products similar to those of the Complainant's products, with packaging bearing the brand "FILLMED 菲洛利医疗" (菲洛利医疗 means "Fei Luo Li Medical") that is very similar to the packaging for the Complainant's genuine products (the "Website"). The Website claims that 菲洛嘉医学门诊部有限公司 (Fei Luo Jia Medical Clinic Ltd.) is the owner of the trade mark "菲洛利" (transliterated as "Fillmed") registered in April, 2018 in China. The Website also displays a company named "法国菲洛嘉医学国际集团有限公司 (HK)" (France Fei Luo Jia Medical International Group Co., Ltd. (HK)) without any further information about the company, and a copyright notice "Copyright © 2019 toskani.com.cn All Rights Reserved". According to the Complainant, Toskani appears to be a Spanish company specializing in the cosmetics sector.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names have been registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact that the products featured on the Website contain English and French language packaging.

The Respondent did not file a Response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs.

The Panel finds there is sufficient evidence to suggest the likely possibility that the Respondent is conversant in the English language.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain ("gTLD") ".net" and the absence of a hyphen, the disputed domain name <fillmed.net> is identical to the Trade Mark.

Disregarding the absence of a hyphen, the disputed domain name <fillmedvip.com> incorporates the entirety of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”, section 1.7) together with the word/acronym “vip”. Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name <fillmed.net> and the disputed domain name <fillmedvip.com> are identical or confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden of production is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has not replied to the Complainant’s contentions.

The Website claims that 菲洛嘉医学门诊部有限公司 (Fei Luo Jia Medical Clinic Ltd.) is the owner of the trade mark “菲洛利” (transliterated as “Fillmed”) registered in April, 2018 in China. The Panel conducted an independent search¹ at the website of China Trade Mark Office and found that: a) 菲洛嘉医学门诊部有限公司 (Fei Luo Jia Medical Clinic Ltd.) applied for registration for Fillmed with the earliest application date of April 27, 2018, however, these applications are either invalid or pending for examination; b) there are no registered trade marks incorporating the word “菲洛利” under the name of 菲洛嘉医学门诊部有限公司 (Fei Luo Jia Medical Clinic Ltd.); c) there are registered trademarks for FILLMED owned by a third party with the earliest application date of July 12, 2018; d) This third party also owns the registered trade marks incorporating the word “菲洛利” with the earliest application date of July 13, 2018; and (e) there are no trade mark applications/registrations under the Respondent’s name.

Further, there is no evidence on record showing any relationship between the Respondent and the Website-claimed trade mark owner 菲洛嘉医学门诊部有限公司 (Fei Luo Jia Medical Clinic Ltd.) nor is there evidence showing any relationship between the Respondent and the third party who owns the trade marks for FILLMED and trade marks incorporating the word “菲洛利”.

Therefore, there is no evidence showing that the Respondent has acquired any trade mark rights in respect of the disputed domain names.

¹ Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. See WIPO Overview 3.0, section 4.8.

The Website also displays a company named “法国菲洛嘉医学国际集团有限公司 (HK)” (France Fei Luo Jia Medical International Group Co., Ltd. (HK)). The Panel searched this company name at the website of China Trade Mark Office and found that this company applied for registration for Toskani in 2019 and this mark is dead. The Panel further notes that the Website has a copyright notice “Copyright © 2019 toskani.com.cn All Rights Reserved”. According to the Complainant, Toskani appears to be a Spanish company specializing in the cosmetics sector.

Further, the Website offers for sale products similar to those of the Complainant’s products, bearing packaging very similar to the packaging for the Complainant’s genuine products.

Considering the above, the Panel finds that the disputed domain names have not been used in connection with a *bona fide* offering of goods or services. There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

The Trade Mark was registered prior to the registration of the disputed domain names. In light of the Panel’s findings under the second element and the manner of use by the Respondent of the Website described above, the Panel finds the requisite element of bad faith has been satisfied under paragraph 4(b)(iv) of the Policy.

For the foregoing reasons, the Panel finds that the disputed domain names have been registered and are 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 names <fillmed.net> and <fillmedvip.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: April 12, 2022