

## **ADMINISTRATIVE PANEL DECISION**

TEVA Pharmaceuticals International GmbH v. 杨智超 (Yang Zhi Chao aka Zhi Chao Yang)

Case No. D2022-1158

### **1. The Parties**

The Complainant is TEVA Pharmaceuticals International GmbH, Switzerland, represented by SILKA AB, Sweden.

The Respondent is 杨智超 (Yang Zhi Chao aka Zhi Chao Yang), China.

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

The disputed domain name <ajovyhc.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 2, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2022, 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 April 5, 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 in English on April 6, 2022.

On April 5, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 6, 2022, the Complainant confirmed its 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 amendment to the 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 April 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 3, 2022.

The Center appointed Joseph Simone as the sole panelist in this matter on May 10, 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**

The Complainant, TEVA Pharmaceuticals International GmbH, is a leading player in the pharmaceuticals industry.

The Complainant has an extensive global portfolio of trade marks containing the term "Ajoyv", including the following:

- China Trade Mark Registration for AJOVY No. 36468940 in Class 5, registered on October 14, 2019;
- European Union Trade Mark for AJOVY No. 016411852 in Class 5, registered on November 5, 2018; and
- United States of America Trade Mark Registration for AJOVY No. 5633449 in Class 5, registered on December 18, 2018.

The Complainant owns the domain names <ajovy.com> and <ajovyhcp.com>.

The disputed domain name was registered on February 16, 2022.

According to screenshots provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to an error page. At the time of drafting of this Decision, the disputed domain name resolved to a parking page with pay-per-click links, actively featuring Ajoyv injection and migraine cures.

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

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

The Complainant asserts that it has prior rights in the AJOVY trade marks and that it is a leading player in its fields of business.

The Complainant further asserts that the disputed domain name is identical or confusingly similar to the Complainant's AJOVY trade marks, and the addition of the term "hc" (indicating "health care") does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

The Complainant also asserts that it has not authorized the Respondent to use the AJOVY mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that there is no evidence suggesting that the Respondent has any connection to the AJOVY mark in any way, and that there is no plausible good faith reason for the Respondent to have registered the disputed domain name, especially after considering the relevant

circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

The Complainant further asserts that the Respondent has been involved in many UDRP proceedings, for example, *Utilities Employees Credit Union v. 杨智超 (Yang Zhi Chao)*, WIPO Case No. [D2021-3096](#) and *W.W. Grainger, Inc. v. 杨智超 (Yang Zhi Chao)*, WIPO Case No. [D2021-2198](#). This clearly shows a systematic behavior of registering well-known trademarks in domain names by the Respondent, which is further evidence of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Language of the Proceeding**

In accordance with paragraph 11(a) of the Rules:

"[...] 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."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should in principle be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting *inter alia* that the name servers for the disputed domain name point to the ParkingCrew.com services (which is a website in the English language) and the Respondent has been involved in many UDRP proceedings that were conducted in the English language, which therefore suggest that the Respondent should be familiar with the English language.

The Respondent was notified in both Chinese and English of the language of the proceeding and the Complaint, and the Respondent did not comment on the language of the proceeding or submit any response.

After considering the relevant circumstances, the Panel determined that the language of the proceeding shall be English, and the Panel has issued this decision in English. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

### **B. Identical or Confusingly Similar**

The Panel acknowledges that the Complainant has established rights in the AJOVY trade marks in many territories around the world.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name incorporates the Complainant's trade mark AJOVY in its entirety. The Panel further notes that the addition of the characters "hc" does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the AJOVY trade marks and in demonstrating that the disputed domain name is identical or confusingly similar to its marks.

### **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

The disputed domain name previously resolved to an error page. At the time of drafting of this Decision, the disputed domain name resolved to a parking page with pay-per-click links, actively featuring Ajovy injection and migraine cures.

Therefore, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated his preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the AJOVY trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify its choice of the term "ajovy" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark, or that the Respondent's adoption of the distinctive trade mark AJOVY was a mere coincidence.

The Complainant's registered trade mark rights in AJOVY for its products and services predate the registration date of the disputed domain name by a few years. A simple online search (e.g., via Google and Baidu) for the term "ajovy" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

Although the disputed domain name did not resolve to any active website at the time of filing of the Complaint, under the circumstances of this case, the non-use of the disputed domain name would not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. The disputed domain name now resolves to a pay-per-click parking website that introduces the Complainant's businesses. Therefore, the Respondent is intentionally attempted to attract Internet users to his website or other online locations, by creating a likelihood of confusion with the Complainant's mark. Such use may also disrupt the Complainant's business.

Accordingly, 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, <ajovyhc.com>, be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: May 23, 2022