

ADMINISTRATIVE PANEL DECISION

Siemens Healthcare GmbH v. 何龙超 (He Long Chao)
Case No. D2022-1393

1. The Parties

The Complainant is Siemens Healthcare GmbH, Germany, represented by Müller Fottner Steinecke Rechtsanwälte PartmbB, Germany.

The Respondent is 何龙超 (He Long Chao), China.

2. The Domain Name and Registrar

The disputed domain name <healgen-healthineers.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 22, 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 amended Complaint in English on April 25, 2022.

On April 22, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 25 and 26, 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 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 April 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2022. The Response in English and Chinese was filed with the Center on May 7, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on May 25, 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 is an affiliated company of the Siemens group, is headquartered in Germany and is active in the healthcare industry. The Complainant has registered the trademark HEALTHINEERS and uses it internationally since 2017 in relation to medical services, equipment and solutions, and in particular for medical imaging and medical diagnostics. The Complainant is also active in the Respondent's jurisdiction China, where it has three production bases and where it regularly participates in exhibitions under its brands "Healthineers" and "Siemens Healthineers", for example at an exhibition in Wuhan in 2019. Furthermore, in 2021, the Complainant entered into a partnership with Healgen Scientific LLC in regard of the commercialization of Covid-19 diagnostic products, particularly an antigen self-test. Such partnership was publicly announced via the Internet on December 30, 2021.

The Complainant provides evidence that it owns a portfolio of trademark registrations for HEALTHINEERS (word and device marks) in a number of jurisdictions around the world, for example International Trademark Registration No. 1320512, for the word mark HEALTHINEERS, registered on March 10, 2016, designating, *inter alia*, China and the United States of America, and International Trademark Registration No. 1616540, for the device mark HEALTHINEERS, registered on April 16, 2021, designating, *inter alia*, China and the United Kingdom. The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name by the Respondent, which is March 28, 2022.

The Complainant's business partner, Healgen Scientific LLC's parent company Zhejiang Orient Gene Biotech Co., Ltd., is the owner of the trademark HEALGEN (International Trademark Registration No. 1446941).

The disputed domain name directs to an inactive webpage and is not in use.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for HEALTHINEERS, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive, famous and well regarded among the consumers in the healthcare industry, and provides printouts of its official website and of several other publications, including a public announcement about its cooperation with Healgen Scientific LLC. The Complainant particularly contends that the disputed domain name was registered in bad faith by the Respondent because the Respondent was aware of the Complainant's trademarks and because the disputed domain name is seen by Internet users as an indication about the cooperation or partnership between the Complainant and Healgen Scientific LLC. The Complainant also argues that due to the strong reputation of the trademark HEALTHINEERS, the public will automatically recognize such mark and will associate the disputed domain

name with the Complainant. As to use of the disputed domain name, the Complainant essentially contends that the Respondent is holding it passively. The Complainant argues that such use does not confer any rights or legitimate interests in respect of the disputed domain name and that such passive holding constitutes use in bad faith of the disputed domain name.

The Complainant requests the cancellation of the disputed domain name.

B. Respondent

The Respondent's communications in this proceeding are limited to, firstly, his email in English to the Complainant of April 25, 2022 in which the Respondent requested the Complainant to contact him to provide more information about this proceeding and, secondly, to the Respondent's Response in English and Chinese filed on May 7, 2022.

In his Response, the Respondent essentially argues that he is a businessman active in international trade and that he has registered the disputed domain name for his business needs. The Respondent also contends that he has successfully registered the disputed domain name and that his ownership rights should be protected by law. The Respondent maintains that the disputed domain name directs to an inactive website and that it is therefore unclear why the Complainant's interests would be harmed by the registration of the disputed domain name. The Respondent finally also proposes to sell the disputed domain name to the Complainant.

6. Discussion and Findings

6.1. Preliminary issue: Language of the Proceeding

Pursuant to 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.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and filed its Response in both Chinese and English.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding by the Respondent and the fact that the Respondent sent an email to the Complainant in English on April 25, 2022 and filed its Response in both Chinese and English, from which the Panel deduces that the Respondent understands and is able to communicate in English; the fact that the disputed domain name is written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

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

(b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(c) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in the mark HEALTHINEERS, based on its use and registration of the same as a trademark.

Further, as to confusing similarity of the disputed domain name with the Complainant's mark, the Panel finds that the disputed domain name consists of the combination of two elements, namely the Complainant's HEALTHINEERS trademark preceded by the word "healgen" and a hyphen.

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing" (see also *Wal-Mart Stores, Inc. v. Richard McLeod d/b/a For Sale*, WIPO Case No. D2000-0662). The Panel concludes that the disputed domain name contains the entirety of the Complainant's trademark, which remains easily recognizable. The Panel furthermore accepts that the addition of the word "healgen", which is the trademark owned by the Complainant's business partner's parent company, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. In this regard, the Panel refers to the WIPO Overview 3.0, section 1.12, which states: "Where the complainant's trademark is recognizable within the disputed domain name, the addition of other third-party marks (i.e., <mark1+mark2.tld>), is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element." Finally, the Panel finds that the hyphen in the disputed domain name may be disregarded as it is considered merely a punctuation mark (see also *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔那 (jun cui)*, WIPO Case No. D2021-1685).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see WIPO Overview 3.0, section 2.1).

In his Response, the Respondent essentially contends that he has successfully registered the disputed domain name for his business needs and that his ownership rights should therefore be protected by law. The Panel disagrees with this argument and refers in this regard to the settled view of panels applying the Policy that the mere registration of a domain name is not sufficient to establish rights or legitimate interests in such domain name incorporating the Complainant's registered trademark (see in this regard for instance *National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net*, WIPO Case No. D2000-0118 and *N.C.P. Marketing Group, Inc. v. Entredomains*, WIPO Case No. D2000-0387).

Further, reviewing the facts of this proceeding, the Panel notes that the disputed domain name directs to an inactive webpage and is not being used by the Respondent. In this regard, the Panel finds that holding a

domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

Given the reputation and fame of the Complainant's prior registered trademarks, the Panel finds that the registration of the disputed domain name, which contains such trademarks in their entirety, clearly and consciously targeted the Complainant's prior registered trademarks for HEALTHINEERS. The Panel particularly notes that the disputed domain name was registered on March 28, 2022, being only a few months after the public announcement of the cooperation via the Internet between the Complainant and its business partner Healgen Scientific LLC regarding a line of Covid-19 antigen self-tests on December 30, 2021. The Panel deducts from these facts that the Respondent consciously knew of the Complainant's prior registered trademarks and registered the disputed domain name, which clearly refers to the cooperation between the Complainant and its partner Healgen Scientific LLC. On the basis of these facts, the Panel accepts that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks and its cooperation with Healgen Scientific LLC at the time of registering the disputed domain name. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the disputed domain name links to an inactive website and is not being used by the Respondent. In this regard, [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding". The Panel has reviewed all elements of this case, and attributes particular relevance to the following elements: the fact that the disputed domain name contains the entirety of the Complainant's trademark for HEALTHINEERS, the high degree of distinctiveness and fame of the Complainant's trademark, the fact that the disputed domain name clearly refers to the business cooperation between the Complainant and its business partner Healgen Scientific LLC and the unlikelihood of any good faith use to which the disputed domain name might be put by the Respondent. The Panel also notes that the Respondent offers to sell the disputed domain name to the Complainant. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent constitutes use of the disputed domain name in bad faith.

On the basis of the foregoing elements, the Panel finds that the Complainant has satisfied the requirements of the third requirement under 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 <healgen-healthineers.com> be cancelled.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: June 8, 2022