

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. jiaojiao si
Case No. D2022-1743

1. The Parties

The Complainant is Laboratoires Thea, France, represented by AARPI Scan Avocats, France.

The Respondent is jiaojiao si, China.

2. The Domain Name and Registrar

The disputed domain name <theamedical.com> (the “Domain Name”) is registered with Hefei Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 23, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent, and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 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 on May 23, 2022.

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 of the Complaint, and the proceedings commenced on May 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2022.

The Center appointed Geert Glas as the sole panelist in this matter on June 23, 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 Laboratoires Thea, a French company offering products in the areas of diagnosis, surgery, and therapeutics in the eye care sector.

The Complainant owns a substantial portfolio of THEA trademarks. Among others, the Complainant has registered the following trademarks:

- the French word trademark THEA (trademark No. 94502704), registered on January 21, 1994, in class 5;
- the French word trademark THEA (trademark No. 3268573), registered on January 20, 2004, in classes 3, 5, 10, 35, 41, and 44;
- the International word trademark THEA (registration No. 996576), registered on September 26, 2008, in classes 3, 5, 10, 35, 39, 41, and 44; and
- the European Union figurative trademark for  (trademark No. 018102779), registered on December 21, 2019, in classes 3, 5, 10, 35, 41, and 44.

The Complainant also owns a series of domain names, including the following ones:

- the domain name <thea-medical.co.uk>, registered on February 20, 2015;
- the domain name <thea-medical.uk>, registered on June 5, 2019; and
- the domain name <thea.group>, registered on March 10, 2020.

The Domain Name was registered on May 2, 2022.

The Registrar's public Whois does not indicate the identity of the Respondent. Upon request from the Center, the Registrar identified the Respondent as being "jiaojiao si".

It appears from the screenshot attached as an annex to the Complaint that the Domain Name is not being actively used. As a result, when the Internet users look up the Domain Name, they receive a message informing them that it is not possible to access the webpage they are looking for.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to it on the following grounds:

(i) the Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights:

The Complainant contends that the Domain Name is confusingly similar to its THEA trademark because it is composed of the term "thea" in first position, followed by a word (*i.e.* medical), which in itself is not sufficient to overcome a claim of confusing similarity with the THEA trademark.

(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name:

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name since the Respondent (i) has not been authorised by the Complainant to use the THEA trademark, (ii) is not related in any way to the Complainant's business, and (iii) to the best of the Complainant's knowledge

is not currently and has never been known under the name “Thea Medical”.

(iii) The Domain Name was registered and is being used in bad faith:

The Complainant contends that the following elements indicate that the Respondent registered the Domain Name in bad faith: (i) the term “thea” has no meaning in French or English and is an arbitrary created word; (ii) the Complainant has registered the domain names <thea-medical.co.uk>, <thea-medical.uk>, and <thea.group> well before the Respondent registered the Domain Name; (iii) almost all results of an Internet search using the key word “thea medical” relate to the Complainant; (iv) the Domain Name is confusingly similar to the THEA trademark; (v) the circumstance that the Respondent would have chosen a domain name similar to the Complainant’s THEA trademark is highly unlikely; (vi) the Respondent does not have a right or legitimate interest in the Domain Name; and (vii) the Complainant’s THEA trademark is well known, as acknowledged in previous UDRP decisions (the Complainant refers to *Laboratoires Thea v. Jun Tsuchikura*, WIPO Case No. [D2021-4367](#); and *Laboratoires Thea SAS contre Yohan Henrino*, WIPO Case No. [D2015-0266](#)).

The Complainant adds that the Domain Name is being used in bad faith. The Complainant’s argumentation is based on references to several UDRP decisions in which panels reached the conclusion that the non-use of a domain name may be considered as a case of use in bad faith of the domain name (the Complainant mentions, among others, the following cases: *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *AXA SA v. Mohamed Awad*, WIPO Case No. [D2020-0066](#) and; and *Verizon Trademark Services LLC v. Perfect Privacy LLC / Merideth Shapiro*, WIPO Case No. [D2019-2577](#)).

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it is the owner of several trademark registrations for THEA, which satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2).

The Domain Name incorporates the Complainant’s THEA trademark in its entirety followed by the word “medical”.

Several UDRP decisions have stated that wholly incorporating a complainant’s registered trademark in a domain name may be sufficient to establish confusing similarity even when another term is added to the trademark (see, e.g., *GA Modefine S.A. v. Mark O’Flynn*, WIPO Case No. [D2000-1424](#); *Viacom International Inc. v. Erwin Tan*, WIPO Case No. [D2001-1440](#); and *eBay Inc. v. ebayMoving / Izik Apo*, WIPO Case No. [D2006-1307](#)).

“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 nature of such additional term(s) may however bear on assessment of the second and third elements” (see [WIPO Overview 3.0](#), section 1.8).

Accordingly, the Panel finds that the first element under paragraph 4(a)(i) of the Policy has been established in respect of the Domain Name.

B. Rights or Legitimate Interests

Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, the consensus view is that, once the complainant has made out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see *e.g.*, *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Dow Jones & Company, Inc., (First Complainant) and Dow Jones LP (Second Complainant) v. The Hephzibah Intro-Net Project Limited (Respondent)*, WIPO Case No. [D2000-0704](#); and [WIPO Overview 3.0](#), section 2.1).

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Indeed, based on the evidence submitted by the Complainant, the Panel finds that it does not appear that the Respondent: (i) has made a legitimate noncommercial or fair use of the Domain Name, (ii) has used the Domain Name in relation with a *bona fide* offering of goods or services, (iii) has been authorised by the Complainant to use the THEA trademark, or (iv) is commonly known by the Domain Name.

Given that the Respondent did not reply to the Complainant's contentions and, as a consequence, failed to present any plausible explanation for the presence of the term "thea" in the Domain Name, the Panel considers that the Complainant has satisfied its burden of proof under this element of the Policy.

Accordingly, the Panel finds that the second element under paragraph 4(a) (ii) of the Policy has been established in respect of the Domain Name.

C. Registered and Used in Bad Faith

The Panel turns to the question of whether the Domain Name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy describes some circumstances which, if found to exist, will be evidence of the registration and use of the domain name in bad faith. They are presented in the alternative and consist of a not exhaustive list of circumstances of bad faith:

(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent has registered the domain name in order to prevent the owner of the trademark 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, by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location.

The Domain Name is composed of the term "thea" and the word "medical". The Panel is of the opinion that the mere presence of the term "thea" in the Domain Name is not sufficient on its own to lead to the conclusion that the Respondent must have known about the Complainant's THEA trademark at the moment

of registration, regardless of the reputation of the trademark. This is the case because, contrary to what the Complainant contends, the term “thea” is not deprived of meaning. It could for example refer to the Greek word for goddess or the first name “Thea”.

However, the presence of the word “medical” next to the term “thea” allows reaching the conclusion that the Respondent could not have been unaware of the Complainant’s rights in the THEA trademark at the moment of registering the Domain Name. It cannot be a coincidence that the Respondent chose to associate the term “thea” with the word “medical” when it is clear that the Complainant has established itself as an important player in the medical sector (see e.g., *Clarins v. Chen Xiaojie / Pavol Icik*, WIPO Case No. [D2014-0284](#)) and owns domain names, with a registration date predating the registration of the Domain name, that also consist of the term “thea” and the word “medical” (i.e. the domain names <thea-medical.co.uk> and <thea-medical.uk>).

Against this background, the Panel finds that the Respondent registered the Domain Name in bad faith.

The Respondent is passively holding the Domain Name. [WIPO Overview 3.0](#), section 3.3 states the following in relation to passive holding of domain names:

“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.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

In the present case, the Panel notes that the Respondent failed to submit a response. The Panel also fails to see any plausible good faith use to which the inherently misleading Domain Name could be put.

Consequently, the Panel finds that the Respondent has been using the Domain Name in bad faith and that the third element under paragraph 4(a)(iii) of the Policy has been established in respect of the Domain Name.

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 Domain Name, <theamedical.com>, be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: July 7, 2022