

ADMINISTRATIVE PANEL DECISION

BeiGene, Ltd v. Edward Stratton

Case No. D2022-4721

1. The Parties

The Complainant is BeiGene, Ltd, Cayman Islands, represented by Venable, LLP, United States of America (“United States”).

The Respondent is Edward Stratton, United States.

2. The Domain Name and Registrar

The disputed domain name <beigene.cloud> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 9, 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 December 12, 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 December 12, 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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 18, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on January 24, 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 company is listed on the NASDAQ, HKEX and SSE exchanges, and operates a life sciences business across five continents, developing and commercializing a pipeline of oncology therapeutics. The Complainant holds a number of registrations for the trademark BEIGENE in various jurisdictions including, for example: African Organization of Intellectual Property (AIPO) Organisation Africaine de la Propriété Intellectuelle (OAPI) Trademark Registration No. 88681 for BEIGENE, registered on June 30, 2016, in classes 35, 40, 42, and 44.

The Complainant owns the domain name <beigene.com> which hosts its main website.

The Respondent registered the Disputed Domain Name <beigene.cloud> on December 2, 2022. The Disputed Domain Name resolves to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant cites its United States Trademark Registration No. 6,064,414 for BEIGENE, registered on May 26, 2020, in class 5, and other registrations internationally for the mark BEIGENE as *prima facie* evidence of ownership.

The Complainant submits that its rights in the mark BEIGENE predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the BEIGENE trademark and that the confusing similarity is not removed by the addition of the generic Top-Level Domain ("gTLD") ".cloud". It submits that its trademark is "well known throughout the pharmaceutical industry as being associated with Complainant and its cancer fighting treatments".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that "[t]he Respondent has not received any license or consent, express or implied, to use the BEIGENE® Trademarks in a domain name or in any other manner from the Complainant".

Finally, the Complainant alleges that the Respondent registered and is using the Disputed Domain Name in bad faith and that "the Respondent acted with opportunistic bad faith in registering the [D]isputed [D]omain [N]ame".

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark BEIGENE in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the BEIGENE trademark, the Panel observes that the Disputed Domain Name comprises: (a) the Complainant’s trademark BEIGENE; (b) followed by the gTLD “.cloud”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: “beigene” (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In this case, the Disputed Domain Name identically incorporates the entirety of the Complainant’s trademark. It is also well-established that 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 [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name is inactive; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name BEIGENE, and has not been commonly known by the name BEIGENE; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain.

The Respondent is not using the Disputed Domain Name with legitimate interests in a domain name incorporating the Complainant’s mark, and is not commonly known by the Disputed Domain Name. The Panel accepts the Complainant’s uncontested submission that “[t]here is no evidence of non-commercial fair use with the [D]isputed [D]omain [N]ame”.

The composition of the Disputed Domain Name, which consists of the Complainant’s trademark does, in this Panel’s view, indicate an awareness and targeting of the Complainant and its mark with the intention to take unfair advantage of such, which does not support a finding of any rights or legitimate interests. Numerous previous panels have recognized that a respondent’s prior registration of a trademark which corresponds to

a disputed domain name will ordinarily support a finding of rights or legitimate interests in that disputed domain name for purposes of the second element of the Policy (see [WIPO Overview 3.0](#), section 2.12).

The Panel finds for the Complainant on this element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy requires that the Complainant must also demonstrate that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, given the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent targeted the Complainant's trademark BEIGENE when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's trademark (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the evidence is that the Disputed Domain Name is inactive and unconnected with any *bona fide* supply of goods or services by the Respondent. Previous UDRP panels have found that the non-use of a domain name 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" (see [WIPO Overview 3.0](#), section 3.3). This Panel notes that the evidence is that at least three of these factors are present in this proceeding.

The Respondent's conduct calls for an explanation, which was not forthcoming. In the absence of any countervailing evidence, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the Complainant's trademark BEIGENE in the Disputed Domain Name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of 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, <beigene.cloud>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: February 7, 2023