

## **ADMINISTRATIVE PANEL DECISION**

Boehringer Ingelheim Animal Health France v. souhei nagao  
Case No. D2023-1929

### **1. The Parties**

The Complainant is Boehringer Ingelheim Animal Health France, France, represented by Nameshield, France.

The Respondent is Souhei Nagao, Japan.

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

The disputed domain name <frontlineplus.xyz> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2023, 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 (Whois Privacy Protection Service by MuuMuuDomain) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2023 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 May 2, 2023.

On May 1, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On May 2, 2023, the Complainant submitted a 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 Japanese of the Complaint, and the proceedings commenced on May 9, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was May 29, 2023. The Response was filed in English with the Center on May 16, 2023.

On May 22, 2023, the proceeding was suspended for purposes of settlement discussions concerning the disputed domain name. On June 23, 2023, the proceeding was reinstated.

The Center appointed Erica Aoki as the sole panelist in this matter on July 6, 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 is active in the animal health industry. The Complainant commercializes antiparasitic for the treatment and prevention of fleas, ticks, and chewing lice in dogs and cats under the brand names FRONTLINE PLUS and FRONTLINE COMBO.

The Complainant is the owner of, among others, the following trademark registrations:

- FRONTLINE, International trademark registration number 621912 registered on June 9, 1994, in class 5;
- FRONTLINE PLUS Japan trademark registration number 4811669 registered on October 22, 2004.

The Complainant has also registered numerous domain names comprising the terms “FRONTLINE PLUS”, such as <frontlineplus.com> registered on June 19, 2002.

The disputed domain name was registered on March 6, 2023 and resolves to an online website entitled “Frontline Plus, flea, tick, extermination” where the Complainant’s FRONTLINE PLUS branded products are described (effects, prices, etc.) and offered for sale on an online pharmacy. Besides, MX servers are configured.

#### **5. Parties’ Contentions**

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

The Boehringer Ingelheim Animal Health business is a global leader in the animal health industry and part of family owned Boehringer Ingelheim, founded in 1885.

The Complainant contends that the disputed domain name is identical to the Complainant’s trademark FRONTLINE PLUS and confusingly similar to the Complainant trademark FRONTLINE.

The Complainant contends that in *Boehringer Ingelheim Animal Health France v. Hashida Youta, Personal*, WIPO Case No. [D2021-2437](#); *Boehringer Ingelheim Animal Health France v. Milen Radumilo*, NAF Case No. 1932211 the Complainant’s rights over the term “FRONTLINE PLUS” was confirmed. Thus, the disputed domain name is identical and confusingly similar to the Complainant’s trademarks FRONTLINE PLUS and FRONTLINE.

The Complainant also contends that that the Top-Level Domain (“TLD”) in the disputed domain name should be disregarded for the confusing similarity test.

The Complainant contends that the Respondent has no rights and legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent is not affiliated nor authorized by the Complainant in any way; specifically no license nor

authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain name; (iii) the disputed domain name was registered on March 6, 2023 and resolves to an online website entitled "Frontline Plus, flea, tick, extermination" where the Complainant's FRONTLINE PLUS branded products are described (effects, prices, etc.) and offered for sale on an online pharmacy unrelated to the Complainant.

The Complainant further contends that the disputed domain name was registered and used in bad faith, for the following reasons: (i) the Respondent registered the disputed domain name many years after the Complainant has established a strong reputation and goodwill in its trademarks; (ii) the Respondent knew of the Complainant's brand and business and yet registered the disputed domain name that is identical to the Complainant's trademarks.

Furthermore, the Complainant contends that the Respondent's use of a domain name is not "fair" in circumstances where the domain name falsely suggests affiliation with the trademark owner, *Eli Lilly and Company and Novartis Tiergesundheits AG v. Manny Ghumman / Mr. NYOB / Jesse Padilla*, WIPO Case No. [D2016-1698](#). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5 and cases cited therein.

The Respondent's use of the disputed domain name reflects an intent to trade on the reputation of the Complainant's trademarks. Thus, even were the goods offered on the Respondent's website authentic FRONTLINE PLUS products – which seems highly unlikely – the disputed domain name and the Respondent's website could falsely suggest to Internet users that the website they have arrived at is affiliated with, sponsored, or endorsed by the Complainant. Such use is not fair, is not legitimate, and does not give rise to rights or legitimate interests, see *COFRA Holding (C&A) v. Contact Privacy Inc., Customer 0149788187 / Wenyan Hu, zigzagzong*, WIPO Case No. [D2018-2381](#) ("The Respondent's use of the disputed domain name in the Panel's view reflects an intent to trade on the reputation of the Complainant's marks. Thus, even were the goods offered on the Respondent's website authentic C&A or CA products – which the Panel deems highly unlikely – the disputed domain name and the Respondent's website could falsely suggest to Internet users that the website they have arrived at is affiliated with, sponsored, or endorsed by the Complainant. Such use is not fair, is not legitimate, and does not give rise to rights or legitimate interests.").

The Complainant concludes that the Respondent has not used or demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and is not making a legitimate non-commercial or fair use of the disputed domain name for purposes of paragraph 4(c)(iii) of the Policy. The Respondent has not been authorized to use the Complainant's trademarks, and there is no indication that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interests in respect of the disputed domain name.

## **B. Respondent**

The Respondent submitted Response on May 16, 2023, in English informing the intention to terminate the use of the disputed domain name.

## **6. Discussion and Findings**

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in respect of 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.

The Respondent submitted a formal response expressing the intention to terminate the use of the disputed domain name.

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

The language of the Registration Agreement for the disputed domain name is Japanese. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. General Energy a/k/a Edison GE GEEEEE.COM a/k/a Edison-GE and Edison Electric Corp.*, WIPO Case No. [D2006-0334](#)).

In deciding whether to allow the proceeding to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that Agreement, the Panel must have regard to all “the relevant circumstances” of the case. The factors that the Panel should take into consideration include *inter alia* whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without causing injustice to the Parties.

According to section 4.5.1 of the [WIPO Overview 3.0](#), prior UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include: (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The Complainant has submitted a request that the language of the proceeding be English. The Complainant, among others, indicates that the disputed domain name is formed by words in Roman characters (ASCII) and not in Japanese script and that in order to proceed in Japanese, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Japanese in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings.

The Panel notes that the Center notified the Respondent in Japanese and English regarding the language of the proceeding and the Respondent was invited to present his objection to the proceeding being held in English and if the Center did not hear from the Respondent by the specified due date, the Center would proceed on the basis that the Respondent had no objection to the Complainant’s request that English be the language of the proceeding. The Respondent had the opportunity to raise objections or make known his preference but did not do so. The Panel further notes that the Center notified the Respondent in Japanese

and English of the Complaint, and the Respondent was informed that it could file a response either in Japanese or English and the Respondent filed a response in English.

Taking all these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

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

Based on the facts presented by the Complainant, this Panel finds that the Complainant has established its rights in FRONTLINE PLUS and FRONTLINE trademarks through registration and use. The Panel finds that the disputed domain name is identical to FRONTLINE PLUS trademark and confusingly similar to the Complainant trademark FRONTLINE, as the disputed domain name includes the Complainant's mark in full and that the Top-Level Domain ("TLD") in the disputed domain name should be disregarded for the confusing similarity test.

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

The Panel finds the following on record in this proceeding under the Policy:

Paragraph 4(c) of the Policy indicates that a registrant may have a right or legitimate interest in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Respondent is in no way connected with the Complainant and has no authorization to use any of the Complainant's trademarks.

There is no evidence on record that the Respondent is or was commonly known by the disputed domain name as an individual, business, or other organization.

There is no evidence on record that 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 Complainant's trademark.

The Panel finds that because the disputed domain name is identical to the Complainant's FRONTLINE PLUS trademark any use of such domain name by the Respondent carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, under the Policy, paragraph 4(a)(ii).

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

The disputed domain name is identical and confusingly similar to the Complainant's trademarks FRONTLINE PLUS and FRONTLINE and the disputed domain name reproduces in its entirety the Complainant's trademark.

Moreover, the Respondent was aware of the Complainant's trademarks FRONTLINE PLUS and FRONTLINE at the time the Respondent registered the disputed domain name since the disputed domain name resolves to an online website entitled "Frontline Plus, flea, tick, extermination" where the Complainant's FRONTLINE PLUS branded products are described (effects, prices, etc.) and offered for sale on an online pharmacy unrelated to the Complainant.

The disputed domain name has been registered many years after the Complainant has established a strong reputation and goodwill in its trademarks and the Respondent is in the business of the sale of

pharmaceuticals. The Respondent in no doubt knew of the Complainant's trademarks at the time of registration of the disputed domain name, and deliberately sought to use their goodwill to attract Internet users seeking the Complainant's product.

The Respondent has registered and used the disputed domain name in order to deceive Internet users seeking the Complainant's product, so as to generate revenue from selling unrelated or competing pharmaceuticals. This constitutes bad faith registration and use within the meaning of the Policy. (*Boehringer Ingelheim Pharma GmbH & Co. KG. v. Williams Shorell*, WIPO Case No. [D2016-0823](#) and *Identigene, Inc. v. Genetest Laboratories*, WIPO Case No. [D2000-1100](#))

Furthermore, MX servers are configured which suggests that it may be actively used for email purposes.

Accordingly, and as also supported by the Panel's findings above under the second element of the Policy, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith under the Policy, paragraph 4(a)(iii).

## 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 <frontlineplus.xyz> be transferred to the Complainant.

*/Erica Aoki/*

**Erica Aoki**

Sole Panelist

Date: July 20, 2023