

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Animal Health France v. 于青青 (yu qing qing)
Case No. D2023-4772

1. The Parties

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

The Respondent is 于青青 (yu qing qing), China.

2. The Domain Name and Registrar

The Disputed Domain Name <nexgard.online> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 16, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 17, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On November 17, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Disputed Domain Name is Chinese. On November 17, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that 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 of the Complaint in Chinese and English, and the proceedings commenced on November 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 7, 2024.

The Center appointed Peter J. Dernbach as the sole panelist in this matter on January 15, 2024. 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 operates a business selling pharmaceutical products for pets and animals. The company was incorporated in France as a limited partnership (société en commandite simple - SCS), and owns the following trademark registrations:

- International word trademark NEXGARD n° 1166496, registered in connection with Class 5 goods since May 29, 2013.
- European Union word trademark NEXGARD n° 011855061 registered in connection with Class 5 goods since October 9, 2013.
- International figurative trademark NEXGARD n° 1676177 registered in connection with Class 5 goods since May 19, 2022.

The Complainant also owns an active domain name <nexgard.net>, which was registered on February 23, 2020.

The Disputed Domain Name was registered by the Respondent on November 14, 2023, and redirects to a Dan.com page where the Disputed Domain Name is offered for sale for USD1450 or leased at USD100 per month.

The Respondent is identified by the Registrar as 于青青 (yu qing qing).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant asserts that it is the proprietor of various NEXGARD international and Europe Union trademark registrations, and that the Disputed Domain Name incorporates the Complainant's NEXGARD trademark in its entirety. The additional generic Top-Level Domain ("gTLD") ".online" cannot distinguish the Disputed Domain Name from the Complainant's trademark. Therefore, the Disputed Domain Name is identical or confusingly similar to the Complainant's registered trademark.

- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

The Complainant contends that the Respondent is not affiliated with the Complainant, and that the Complainant does not carry out any activities or conduct any business with the Respondent. In addition, the Respondent has not been granted license or authorization to make any use of the Complainant's NEXGARD trademark.

In addition, the Complainant argues that the Whois database does not identify the Respondent as being commonly known as the Disputed Domain Name. Furthermore, given that the active website to which the Disputed Domain Name resolves to is a for-profit domain-selling online store, the Disputed Domain Name is

not being used in connection with a bona fide offering of goods and services, and evidences the Respondent's lack of rights or legitimate interest; thus, this does not constitute legitimate noncommercial or fair use. Therefore, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

The Complainant contends that its trademark is distinctive and well-known. Given this, the Complainant believes that the Respondent registered the Disputed Domain Name with full knowledge of the Complainant's mark.

Furthermore, as the Disputed Domain Name resolves to an online store offering to sell domain names, the Complainant also contends that Respondent only registered the Disputed Domain Name to sell it for commercial gain, which evidences bad faith.

Therefore, the Complainant contends that the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the Disputed Domain Name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including that English is the most widely used language in international relations, proceeding in Chinese would pose undue burden on the Complainant given the high cost of translation services, and that the Respondent is clearly able to communicate in English, given that they have contacted the Complainant through an English email.

The Respondent did not make any specific submissions with respect to the language of the proceeding. However, the Complainant submitted an email that was sent from a sender bearing the Respondent's name and an email address as identified by the Registrar ("Qingqing" and "[...]@hotmail.com"), offering to transfer the Disputed Domain Name to the Complainant at the price of USD 700. Given that this email can be attributed to the Respondent and was written in English, it serves as evidence that the Respondent has the ability to read and write in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

In accordance with paragraph 4(a) of the Policy, in order to succeed in this administrative proceeding and obtain the requested remedy (in this case, transfer of the Disputed Domain Name), the Complainant must prove that each of the three following elements are present:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it is the proprietor of rights in the NEXGARD trademark, registered in connection with Class 5 goods for veterinary articles and veterinary preparations. Based on the available records, the Panel finds that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.2.1).

The Panel finds that the Disputed Domain Name reproduces the Complainant's NEXGARD mark in its entirety. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.7). In addition, the Panel finds that the gTLD suffix ".online" is consistently viewed as a standard registration requirement. As such, it does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.8). Accordingly, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

Given the above, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy provides that "[a domain name holder] is required to submit to a mandatory administrative proceeding in the event that [a complainant] asserts to the applicable [administrative dispute resolution service provider], in compliance with the Rules of Procedure, that [...] (ii) [the respondent has] no rights or legitimate interests in respect of the [disputed] domain name [...]"

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, the Disputed Domain Name, for the purposes of paragraph 4(a)(ii) of the Policy:

- "(i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [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 trademark or service mark at issue."

Pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy, the Complainant is required to first establish a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The burden of production then shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name.

The Panel finds that the NEXGARD trademark is a fanciful trademark with no dictionary meaning in English or Chinese, and that the Disputed Domain Name resolves to a commercial website that offers to sell domain names for profit, which is not noncommercial or fair use. The Panel also finds that there is no evidence indicating that the Respondent is commonly known by the Disputed Domain Name or the name “nexgard”. The Complainant also asserts that it has not authorized or licensed the Respondent to make any use of its NEXGARD trademark, including use of the Disputed Domain Name.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not come forward with any relevant arguments or evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Accordingly, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that “[a domain name holder] is required to submit to a mandatory administrative proceeding in the event that [a complainant] asserts to the applicable [administrative dispute resolution service providers], in compliance with the Rules of Procedure, that [...] (iii) [the respondent’s] domain name has been registered and is being used in bad faith”.

Paragraph 4(b) of the Policy explicitly states, in relevant part, that “the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(iv) circumstances indicating that [the respondent has] registered or 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 your documented out-of-pocket costs directly related to the domain name”.

In the present case, the Panel acknowledges that the Complainant’s trademarks were registered as early as 2013 – ten years prior to the registration of the Disputed Domain Name – and that the Complainant has adequately shown that its trademark is well-known and distinctive, which are applicable considerations in assessing bad faith ([WIPO Overview 3.0](#), section 3.2). It appears that the Respondent knew of the Complainant’s NEXGARD trademark at the time of registration. The Respondent subsequently offered to sell the Disputed Domain Name to the Complainant or other purchasers for a profit. Based on the available record, the Panel finds the Respondent registered and used the Disputed Domain Name in bad faith.

Given the above, the Panel finds that the Complainant has established the third element 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 <nexgard.online> be transferred to the Complainant.

/Peter J. Dernbach/

Peter J. Dernbach

Sole Panelist

Date: January 26, 2024