

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH & Co KG v. 于青青 (yu qing qing)
Case No. D2023-4775

1. The Parties

The Complainant is Boehringer Ingelheim Pharma GmbH & Co KG, Germany, represented by Nameshield, France.

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

2. The Domain Name and Registrar

The disputed domain name <spiriva.online> 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 November 16, 2023. On the same day, 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 complete contact details. The Center sent an email communication to the Complainant on the same day providing the complete registrant 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 November 21, 2023.

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 the same day, the Complainant requested that the language of the proceeding be English. On the same day, the Respondent objected to the Complainant’s request and requested that the language of the proceeding be Chinese.

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 Chinese and English of the Complaint, 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 formal response. However, on November 23, 2023, the Respondent sent an informal email communication to the Center and the Complainant's representative indicating that she was willing to discuss the transfer of the disputed domain name if the Complainant discontinued this proceeding. On the following day, the Respondent sent an informal email communication to the Complainant's representative, copied to the Center, in which she offered to sell the disputed domain name to the Complainant for USD 600. On November 28, 2023, the Center received the Complainant's request by email to continue the proceeding. On December 15, 2023, the Center notified the Parties that it would proceed with panel appointment.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 5, 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 is a pharmaceutical company. It markets capsules of tiotropium bromide (an anticholinergic bronchodilator used in the management of chronic obstructive pulmonary disease) as SPIRIVA. The Complainant owns trademark registrations for SPIRIVA in multiple jurisdictions, including the following:

- International trademark registration number 692353, registered on April 1, 1998, designating multiple jurisdictions, including China; and
- European Union trademark registration number 000789529, registered since June 16, 1999.

The above trademark registrations both specify pharmaceutical and veterinary preparations in class 5 and they are both current. The Complainant also registered the domain name <spiriva.com> on February 15, 1999 that it uses in connection with a website where it provides information about its SPIRIVA pharmaceuticals.

The Respondent is an individual based in China.

The disputed domain name was registered on November 14, 2023. It resolves to a webpage hosted by a domain name broker where it is offered for sale for USD 1,450, or for lease to own for USD 100 per month.

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.

Notably, the Complainant contends that the disputed domain name is identical to its SPIRIVA mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with, nor authorized by, the Complainant in any way. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademarks, nor to apply for registration of the disputed domain name. The disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The disputed domain name resolves to a webpage displaying a general offer to

sell it for USD 1,450.

B. Respondent

The Respondent did not reply to the Complainant's contentions other than to request Chinese to be the language of the proceeding and to offer to settle. She argues that the price of USD 600 that she offers reflects her investment in the disputed domain name and its potential value. She notes that this price is well below her previous listing price of USD 1,450.

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. Its main reasons are that the disputed domain name is in Latin characters not Chinese, and that the cost of translation would impose a significant burden on the Complainant.

Among the Respondent's three informal email communications sent to the Center two were in Chinese entirely, and one was in both Chinese and English with a note indicating that "the English text is translated using translation software". She requested that the language of the proceeding be Chinese. Her main reasons are that Chinese is her mother tongue, and that the use of Chinese ensures her accurate understanding and effective participation in this proceeding. She made a settlement offer but did not express any interest in providing a substantive response to the Complainant's contentions.

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, but that the Panel will accept all communications as received in their original language, whether Chinese or English, without translation.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to 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; 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.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing

(or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the SPIRIVA trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the SPIRIVA mark is reproduced within the disputed domain name. The disputed domain name adds a generic Top-Level Domain ("gTLD") extension (".online") which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the SPIRIVA mark. See [WIPO Overview 3.0](#), section 1.11. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

The disputed domain name resolves to webpage where it is merely offered for sale. The Panel does not consider this to be a use of the disputed domain name in connection with a *bona fide* offering of goods or services for the purposes of the Policy, nor is it a legitimate noncommercial or fair use. The Respondent's name is 于青青 (yu qing qing), which is nothing like the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by 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 rebutted the Complainant's *prima facie* showing because she has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The first of these is as follows:

(i) circumstances indicating that [the Respondent has] registered or [the Respondent 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's] documented out-of-pocket costs directly related to the domain name.

The disputed domain name was registered in 2023, years after the registration of the Complainant's SPIRIVA mark, including in China where the Respondent is based. The disputed domain name is identical to the SPIRIVA mark (adding only a gTLD extension). That mark is a coined term with no apparent meaning other than as a reference to the Complainant's products. The Respondent provides no alternative explanation for her choice to register the disputed domain name other than a general reference to its potential value. In view of these circumstances, the Panel has reason to find that the Respondent had the Complainant's SPIRIVA mark in mind when she registered the disputed domain name.

As regards use, the disputed domain name resolves to a broker's webpage where it is offered for sale for USD 1,450. The Respondent offered the disputed domain name for sale for USD 600 during this proceeding. The Panel considers it more likely than not that each price exceeds the Respondent's documented out-of-pocket costs directly related to the disputed domain name. This inference appears to find confirmation in the Respondent's statement that the lower asking price reflects the potential value of the disputed domain name as well as her investment in it. In any case, the Respondent does not provide any documented costs directly related to the disputed domain name. Accordingly, the Panel finds that these circumstances fall within the terms of paragraph 4(b)(i) of the Policy.

For the above reasons, 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 <spiriva.online> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: January 16, 2024