

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim International GmbH. v. 吴锐 (Wu Rui)
Case No. D2024-0069

1. The Parties

Complainant is Boehringer Ingelheim International GmbH., Germany, represented by Nameshield, France.

Respondent is 吴锐 (Wu Rui), China.

2. The Domain Name and Registrar

The disputed Domain Name <ofev074.xyz> (the “Domain Name”) is registered with Zhengzhou Century Connect Electronic Technology Development Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2024. On January 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 12, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On January 15, 2024, the Center informed the parties in Chinese and English, that the language of the Registration Agreement for the Domain Name is Chinese. On January 16, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

The Center verified that the Complaint 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 Respondent of the Complaint, and the proceedings commenced on January 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 11, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 12, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on February 16, 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

Complainant is a pharmaceutical group of companies founded around 1885 by Albert Boehringer in Ingelheim am Rhein, Germany. Complainant has since become a global research-driven pharmaceutical enterprise with approximately 53,000 employees and net sales of EUR 24.1 billion in 2022. Complainant's OFEV product is approved as a drug prescription for the treatment of idiopathic pulmonary fibrosis.

Complainant owns numerous registered trademarks including the terms OFEV in numerous countries, including International trademark No. 1120388 for OFEV, registered on April 10, 2012, designating numerous countries, including China, where Respondent resides.

Complainant also owns and operates multiple domain names with the mark OFEV, such as <ofev.com>, which has been registered and used since January 12, 2006.

The Domain Name was registered on December 21, 2023. At the time of the filing of the Complaint, the Domain Name reverted to an inactive site. At the time of the Decision, the Domain Name directs to an error page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for OFEV and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known OFEV products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use the Domain Name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its Complaint in English. In its email dated January 16, 2024, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: the Domain Name is registered in Latin characters and not Chinese script, that English is the language most widely used in international relations, that proceeding in Chinese would require Complainant to retain specialized translation services, and the time and costs required for translation of the proceedings would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant further states that the Center has communicated with Respondent in Chinese and Respondent has been provided the opportunity to respond in Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the OFEV trademarks, as noted above. Complainant has also submitted evidence, which supports that the OFEV trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the OFEV trademarks.

With Complainant's rights in the OFEV trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".xyz"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's OFEV trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Name. In particular, the Domain Name includes Complainant's trademark OFEV in its entirety, with the addition of the numbers "074" after the OFEV mark in the Domain Name <ofev074.xyz>. The addition of the numbers "074" after or in the OFEV trademark in the Domain Name as noted does not prevent a finding of confusing similarity between the Domain Name and the OFEV trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its OFEV trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the OFEV trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the OFEV trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name. Further, the nature of the Domain Name comprising Complainant's trademark in its entirety, with the additional numbers "074" indicates an awareness of Complainant.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name resolved to an inactive website. At the time of the Decision, the Domain Name directs to an error page. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have 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; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the OFEV trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's OFEV trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the OFEV trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's OFEV trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the OFEV trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

In the present circumstances, considering the distinctiveness and reputation of the OFEV trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <ofev074.xyz> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 1, 2024