

ADMINISTRATIVE PANEL DECISION

Novartis AG v. 陈涵 (Chen Han), 海南趣够科技有限公司 (Hai Nan Qu Gou Ke Ji You Xian Gong Si) and 谢瑶 (Xie Yao), 深圳星芒互联科技有限公司 (Shen Zhen Xing Mang Hu Lian Ke Ji You Xian Gong Si)
Case No. D2024-2644

1. The Parties

The Complainant is Novartis AG, Switzerland, represented by Greenberg Traurig, LLP, United States of America (“United States”).

The Respondents are 陈涵 (Chen Han), 海南趣够科技有限公司 (Hai Nan Qu Gou Ke Ji You Xian Gong Si) and 谢瑶 (Xie Yao), 深圳星芒互联科技有限公司 (Shen Zhen Xing Mang Hu Lian Ke Ji You Xian Gong Si), China.

2. The Domain Names and Registrar

The disputed domain names <kesimpta-a.online>, <kesimpta-cost.online>, <kesimptacost.online>, <kesimpta-cost1.online>, <kesimpta-cost2.online>, <kesimpta-cost8.online>, <kesimpta-cost9.online>, <kesimpta.icu>, <kesimpta-ii.online>, <kesimpta-l.online>, <kesimpta-l01.online>, <kesimpta-l02.online>, <kesimpta-medication.online>, <kesimpta-monthly-cost.online>, <kesimpta-new01.online>, <kesimpta.online>, <kesimpta-op.online>, <kesimpta-ox.online>, <kesimpta-rms.online>, <kesimpta.space>, <kesimpta-use-for.online>, <kesimpta-uses.online>, <kesimpta-v2024.online>, <kesimpta001.online>, <kesimpta002.online>, <kesimpta01.online>, <kesimpta1.online>, and <kesimpta-2024.online> (each a “Disputed Domain Name” and collectively the “Disputed Domain Names”) are registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2024. On June 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On July 3, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondents and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 11, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the Disputed Domain Names associated with different

underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint in English on July 15, 2024.

On July 11, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Disputed Domain Names is Chinese. On July 15, 2024, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the Complainant's submission.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on July 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on August 8, 2024.

The Center appointed Peter J. Dernbach as the sole panelist in this matter on August 22, 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

Formed in 1996 by the merger of Swiss pharmaceutical companies Ciba-Geigy and Sandoz, the Complainant is a Swiss company specializing in the development of pharmaceutical products. The Complainant has more than 380 operating sites around the world, including more than fifty production sites worldwide and R&D facilities in the United States, Europe, and Asia. The Complainant's medicines treat major diseases, and one such medicine is ofatumumab offered under the brand name KESIMPTA, which treats relapsing forms of multiple sclerosis.

The Complainant owns trademark registrations in multiple jurisdictions, including the following (collectively the "KESIMPTA Trademarks"):

1. Chinese Trademark Registration No. 46323722, dated October 14, 2021, for the word mark KESIMPTA.
2. United States Trademark Registration No. 5537963, dated August 14, 2018, for the word mark KESIMPTA.
3. International Registration No. 1390984, dated January 15, 2018, for the word mark KESIMPTA, designating jurisdictions including the European Union.

The Complainant has been operating a website at the domain name <kesimpta.com>, which was registered on January 3, 2018.

The Disputed Domain Names were registered in the period between March 22, 2024, to April 1, 2024. Out of the twenty-eight Disputed Domain Names, two of them (<kesimpta-a.online> and <kesimpta-ii.online>) do not resolve to any active website. The remaining twenty-six Disputed Domain Names resolve to pay-per-click ("PPC") advertising websites displaying titles such as "Injection Mold Quote", "Material Handling Equipment", and "Quincy Rotary Screw Air Compressor", which, when clicked, redirect the website visitors to additional PPC or affiliate advertising websites.

According to the information provided by the Registrar, the Respondents appear to be two companies with addresses located in China. The Disputed Domain Names were registered in the names shown in the following table:

| Disputed Domain Name | Registrant |
|--|--|
| <kesimpta-l02.online> | Shen Zhen Xing Mang Hu Lian Ke Ji You Xian Gong Si |
| [All twenty-seven remaining Disputed Domain Names] | Hai Nan Qu Gou Ke Ji You Xian Gong Si |

5. Parties' Contentions

A. Complainant

The Complainant requests that the Disputed Domain Names be transferred to the Complainant. The Complainant contends that it has satisfied each of the elements required under paragraph 4(a) of the Policy, summarized as follows:

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

The Complainant contends that it is the owner of the KESIMPTA Trademarks and has been operating a website at the domain name <kesimpta.com> registered on January 3, 2018. The Complainant argues that the Disputed Domain Names are confusingly similar to the Complainant's KESIMPTA Trademarks, as the Disputed Domain Names incorporate the KESIMPTA Trademarks in full, changing the marks only by adding generic Top-Level Domains ("gTLDs") and generic terms, which fails to produce domain names distinct from the Complainant's trademarks. The Complainant further argues that the addition of the term "medication" and gTLD ".icu" directly relate to the Complainant's medical goods and services, which increases the likelihood of confusion.

For the reasons above, the Complainant contends that all of the Disputed Domain Names are confusingly similar to the Complainant's KESIMPTA Trademarks.

(ii) The Respondents have no rights or legitimate interests in respect of the Disputed Domain Names.

The Complainant asserts that the Respondents are not commonly known by the Disputed Domain Names, have not used or prepared to use the Disputed Domain Names in connection with a bona fide offering of goods or services, and have not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the Disputed Domain Names.

Moreover, the Complainant contends that the Respondents have never operated any bona fide or legitimate business under the Disputed Domain Names and are not making protected noncommercial or fair use of the Disputed Domain Names. Notably, the Respondents are using all the Disputed Domain Names, with the exception of <kesimpta-a.online> and <kesimpta-ii.online>, to divert Internet traffic to websites that contain PPC or affiliate advertising links, which presumably generate affiliate revenue for the Respondents when they are clicked by Internet users who arrive at these Disputed Domain Names by accident when searching for the Complainant. Additionally, the Complainant argues that while the Respondents are passively holding the Disputed Domain Names <kesimpta-a.online> and <kesimpta-ii.online>, the Respondents are not using them for a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.

For the reasons above, the Complainant contends that the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names.

(iii) The Disputed Domain Names have been registered and are being used in bad faith.

The Complainant contends that the Respondents registered the Disputed Domain Names with knowledge of the Complainant's KESIMPTA Trademarks, seeking to use the confusingly similar Disputed Domain Names to intentionally attract Internet users to the Respondents' websites and PPC advertising for the purposes of commercial gain. This conduct demonstrates bad faith registration and use pursuant to paragraphs 4(b)(iii) and (iv) of the Policy, as the Respondents intend to cause disruption of the Complainant's business and create a likelihood of confusion regarding source, sponsorship, affiliation, or endorsement. The Complainant argues that although the Disputed Domain Names <kesimpta-a.online> and <kesimpta-ii.online> do not resolve to content like the other Disputed Domain Names, passive holding by the Respondents does not preclude the possibility of that the Respondents are in fact using the Disputed Domain Names in bad faith.

The Complainant further contends that as the Disputed Domain Names are obviously connected with the Complainant and its services, their very use by someone with no connection to the Complainant is opportunistic bad faith. In addition, the Complainant asserts that the Respondents' failure to respond to the Complainant's correspondences, clearly setting forth the Complainant's rights in the KESIMPTA Trademarks, indicates that the Disputed Domain Names have been registered and are being used in bad faith.

For the reasons above, the Complainant contends that the Disputed Domain Names have been registered and are being used in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1 Consolidation: Multiple Disputed Domain Name Registrants

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are under common control. The Complainant requests the consolidation of the Complaint against the multiple Disputed Domain Name registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. However, the Panel does not consider that paragraph 3(c) was intended to enable a single person or entity to put a complainant to the unnecessary time, expense, and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider whether (i) the Disputed Domain Names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the Disputed Domain Names were all registered within a short period of eleven days, using the same registrant contact email and registrar, and containing the Complainant's KESIMPTA Trademarks in their entirety. Although one of the Disputed Domain Names was registered in the name of a different registrant, it nonetheless shares the aforementioned commonalities with the remaining Disputed Domain Names, in addition to resolving to a website containing a similar layout and PPC advertising links as the remaining Disputed Domain Names that resolve to active websites. In these circumstances, the Panel is persuaded that all twenty-eight Disputed Domain Names are under common control. As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party. Accordingly, the Panel accepts the Complainant's consolidation request. The Respondents are hereinafter referred to as "the Respondent".

6.2 Language of the Proceeding

The Panel determines under paragraph 11(a) of the Rules that the language of the proceeding should be English, for the reasons described below.

Paragraph 11(a) of the Rules provides that, “[u]nless 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.” Paragraphs 10(b) and 10(c) of the Rules also require the Panel to “ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case,” and to “ensure that the administrative proceeding takes place with due expedition.”

The language of the Registration Agreement for the Disputed Domain Names is Chinese. However, the Complaint was filed in English, and the Complainant has requested the language of the proceeding to be English, on the grounds that the twenty-six Disputed Domain Names that resolve to active pages that contain text in English, which indicate some level of familiarity of the Respondent with English.

The Panel also finds that, while the Respondent has been provided with the opportunity to make submissions with respect to the language of the proceeding, the Respondent eventually failed to do so.

Considering the above, the Panel is of the view that the Complainant has successfully demonstrated the circumstances where using English as the language of the proceeding is appropriate. Therefore, in exercising its discretion under paragraph 11(a) of the Rules to use a language other than that of the Registration Agreement, the Panel determines that the language of the proceeding should be English.

6.3 Analysis of 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 Names), 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 shown rights in respect of the KESIMPTA Trademarks for the purposes of the Policy.

All Disputed Domain Names incorporate the KESIMPTA Trademarks in their entirety. While the Disputed Domain Names <kesimpta.icu>, <kesimpta.online>, and <kesimpta.space> incorporate gTLDs such as “.icu”, “.online”, and “.space.”, a gTLD is a technical requirement of domain name registration and is normally disregarded in the comparison between a disputed domain name and a trademark for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.11.1. The remaining Disputed Domain Names incorporate a combination of gTLDs and terms or numbers, such as “cost”, “001”, “-medication”, “-ox”, “-use-for”, “-cost1”, “-v2024”, etc. However, the addition of these terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainant’s trademark, as the trademark KESIMPTA remains recognizable within the Disputed Domain Names. Accordingly, the Panel is of the view that the Disputed Domain Names <kesimpta.icu>, <kesimpta.online>, and <kesimpta.space> are identical to the Complainant’s trademark, and the rest of Disputed Domain Names are confusingly similar to the Complainant’s trademarks for the purposes of the Policy. [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. [WIPO Overview 3.0](#), section 2.1.

The Complainant has asserted that it has not authorized the Respondent to use the Complainant's KESIMPTA Trademarks. There is no indication that the Respondent has ever been commonly known by the Disputed Domain Names. Nor does the record reflect the Respondent's use or demonstrable preparations to use the Disputed Domain Names in connection with a bona fide offering of goods or services prior to any notice of the dispute. To the contrary, all Disputed Domain Names, except <kesimpta-a.online> and <kesimpta-ii.online>, resolve to websites that contain PPC or affiliate advertising links. The Respondent presumably uses these links to generate affiliate revenue when they are clicked by Internet users, which does not constitute a legitimate noncommercial or fair use. The use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

As regards <kesimpta-a.online> and <kesimpta-ii.online>, while they do not appear to resolve to any active website, there is no evidence to suggest use of, or demonstrable preparations to use, these two Disputed Domain Names in connection with a bona fide offering of goods or services.

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 Names.

The Respondent has not provided any arguments or evidence to demonstrate rights or legitimate interests in the Disputed Domain Names such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, 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.

In the present case, the Panel notes that the Complainant's KESIMPTA Trademarks and domain name <kesimpta.com> have been registered and used extensively before the registration of the Disputed Domain Names. It is unlikely that the Respondent was unaware of such existence at the time of registration of the Disputed Domain Names. In addition, the Panel finds no apparent record of use of the Complainant's KESIMPTA Trademarks in connection with any goods or services other than in connection with the Complainant. Therefore, the Panel finds that the Respondent registered the Disputed Domain Names in bad faith.

All Disputed Domain Names, except <kesimpta-a.online> and <kesimpta-ii.online>, resolve to websites that contain PPC or affiliate advertising links, which presumably divert Internet traffic to garner revenue for the Respondent's commercial gain. In view of the circumstance, the Panel finds that these Disputed Domain Names are intended to attract Internet users by creating a likelihood of confusion with the Complainant's KESIMPTA Trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or of a service on those websites, which constitute use in bad faith within the terms of paragraph 4(b)(iv) of the Policy.

As regards <kesimpta-a.online> and <kesimpta-ii.online>, while they do not appear to resolve to any active website, panels have found that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the strong reputation of the Complainant's trademark, and finds that the passive holding of the two Disputed Domain Names does not prevent a finding of bad faith under the Policy. In addition, these two Disputed Domain Names were registered at or around the same time as the other Disputed Domain Names that have been actively used. In the Panel's view, the most likely intended uses of the passively held Disputed Domain Names are the same as those of the Disputed Domain Names that have been actively used, which are in bad faith.

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 Names <kesimpta-a.online>, <kesimpta-cost.online>, <kesimptacost.online>, <kesimpta-cost1.online>, <kesimpta-cost2.online>, <kesimpta-cost8.online>, <kesimpta-cost9.online>, <kesimpta.icu>, <kesimpta-ii.online>, <kesimpta-l.online>, <kesimpta-l01.online>, <kesimpta-l02.online>, <kesimpta-medication.online>, <kesimpta-monthly-cost.online>, <kesimpta-new01.online>, <kesimpta.online>, <kesimpta-op.online>, <kesimpta-ox.online>, <kesimpta-rms.online>, <kesimpta.space>, <kesimpta-use-for.online>, <kesimpta-uses.online>, <kesimpta-v2024.online>, <kesimpta001.online>, <kesimpta002.online>, <kesimpta01.online>, <kesimpta1.online>, and <kesimpta-2024.online> be transferred to the Complainant.

/Peter J. Dernbach/

Peter J. Dernbach

Sole Panelist

Date: September 5, 2024