

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH v. 西安椰果信息技术有限公司
(xianyeguoxinxijishuyouxiangongsi)

Case No. D2024-3001

1. The Parties

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

The Respondent is 西安椰果信息技术有限公司 (xianyeguoxinxijishuyouxiangongsi), China.

2. The Domain Names and Registrar

The disputed domain names <jardiance.fun> and <jardiance.store> 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 July 24, 2024. On July 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 25, 2024, 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. The Center sent an email communication to the Complainant on July 25, 2024, providing the additional registrant and contact information disclosed by the Registrar.

On July 25, 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 the same day, 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 in English and Chinese of the Complaint, and the proceedings commenced on July 31, 2024. In accordance with the

Rules, paragraph 5, the due date for Response was August 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 23, 2024.

The Center appointed Hong Yang as the sole panelist in this matter on August 27, 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 group of companies with roots going back to 1885. It has become a global research-driven pharmaceutical enterprise with 53,500 employees. The Complainant's business covers two areas of human pharma and animal health. In 2023, net sales of the Complainant amounted to about EUR 25.6 billion. The Complainant has several central R&D facilities, one of which is in China where the Respondent is reportedly located.

The Complainant owns a portfolio of trademarks containing JARDIANCE in multiple jurisdictions, including the International Trademark Registration No. 981336, registered on September 3, 2008, designating several jurisdictions including China.

The Complainant also owns multiple domain names consisting of the mark JARDIANCE, including <jardiance.com>, registered on April 30, 2008.

The disputed domain names were both registered on July 22, 2024. The evidence provided by the Complainant shows that, at the time of filing of this Complaint, the disputed domain names resolved to parked pages comprising pay-per-click ("PPC") links containing commercial promotion contents related to the Complainant's business fields. Besides, mail exchange ("MX") servers are configured for the two disputed domain names.

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 names.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names 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 the fact that: (1) English is widely used internationally and a working language of the Center; (2) the disputed domain names are formed by words in Roman characters and not in Chinese script; and (3) the use of Chinese would impose a burden of higher costs on the Complainant.

The Respondent had, moreover, been notified by the Center, in both Chinese and English, of the language of the proceeding, and the deadline for filing a Response in Chinese or English. The Respondent did not make any submissions with respect to the language of the proceeding nor did the Respondent file any Response.

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

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 names. [WIPO Overview 3.0](#), section 1.7.

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 the mark is reproduced in its entirety within the disputed domain names. Accordingly, the disputed domain names are identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The applicable generic Top-level Domain ("gTLD"), here ".fun" and ".store", in the disputed domain names do not change this finding, since the gTLD (including "new gTLDs"), as a standard registration requirement, is generally disregarded in the assessment under the first element. [WIPO Overview 3.0](#), section 1.11.1.

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.

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 rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Panel notes that the composition of the disputed domain names themselves carries a high risk of implied affiliation, where the disputed domain names are identical to the Complainant's trademark. Such composition cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Available record shows that the Respondent was not affiliated or otherwise authorized by the Complainant or held any registration of the JARDIANCE mark anywhere. There is no evidence indicating that the Respondent might be commonly known by the disputed domain names. At the time of filing of the Complaint, the disputed domain names resolved to parked pages hosting PPC links, which contain contents and promotions seemingly related to the Complainant's fields of pharmaceutical business. The Panel is convinced that the Respondent has capitalized on the well-known mark of the Complainant, gaining revenues from PPC links targeting the Complainant. Such use cannot constitute any legitimate noncommercial or fair use either. Panels have found that 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. [WIPO Overview 3.0](#), section 2.9.

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 Respondent has used, without any license or authorization, the entirety of the Complainant's trademark in the disputed domain names. The Complainant's trademark JARDIANCE is well known and the Complainant's registration and use of its mark much predates the Respondent's registration of the disputed domain names, so the Respondent knew or should have known of the Complainant's mark at the time of registering the disputed domain names. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

There is a clear absence of the Respondent's rights or legitimate interests in the disputed domain names as discussed under the section 6.2.B of the decision, coupled with the Respondent's failure to submit a response with any credible explanation for the Respondent's choice of the disputed domain names. This, combined with the nature of the disputed domain names, also indicates that the Respondent's registration targets the Complainant, which constitutes bad faith.

The available record shows that, at least part of the PPC links on the Respondent's websites under the disputed domain names contain contents and promotions relating to the Complainant's field of business (i.e., pharmaceuticals). The Panel is convinced that the Respondent targets the Complainant to attract Internet users to its websites by creating a likelihood of confusion, and intends to gain unlawful profits from the PPC links, taking unfair advantage from the Complainant's reputational trademark. The disputed domain names were thus registered and used in bad faith.

Furthermore, available record also indicates that MX records have been configured by the Respondent in connection with the disputed domain names. Considering the composition of the disputed domain names, the Panel is convinced that the Respondent has the possible intention to use the disputed domain names and relevant email addresses to conduct potentially fraudulent activities, which represents an ongoing implied threat to the Complainant.

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 <jardiance.fun> and <jardiance.store> be transferred to the Complainant.

/Hong Yang/

Hong Yang

Sole Panelist

Date: September 10, 2024