

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim International GmbH 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)
Case No. D2024-4248

1. The Parties

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

The Respondent is 陈涵 (Chen Han), 海南趣够科技有限公司 (Hai Nan Qu Gou Ke Ji You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <jardiance-op.online> is 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 October 15, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 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.

On October 16, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On October 17, 2024, 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 Chinese and English of the Complaint, and the proceedings commenced on October 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2024.

The Center appointed Francine Tan as the sole panelist in this matter on November 20, 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 founded in 1885 by Albert Beohringer in Ingelheim am Rhein, Germany. Today, the Complainant has become a global research-driven pharmaceutical enterprise with 53,500 employees. In 2023, the Complainant's net sales were around EUR 25.6 billion.

The Complainant's trade mark JARDIANCE is used in relation to prescription medicine, the generic name for which is Empagliflozin. The medicine is used to lower blood sugar and to reduce the risk of cardiovascular death in adults with type 2 diabetes.

The Complainant states that it owns a portfolio of trade mark registrations which include the word "JARDIANCE", including International trade mark registration No. 981336, registered on September 3, 2008.

The Complainant also owns various domain names which include the word "Jardiance". Its domain name <jardiance.com> was registered on April 30, 2008.

The disputed domain name was registered on August 28, 2024, and at the time of the filing of the Complaint, resolved to a parking page containing Pay-Per-Click ("PPC") links.

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 confusingly similar to the JARDIANCE trade mark in which the Complainant has rights. The disputed domain name contains the entirety of the Complainant's JARDIANCE trade mark with the addition of the term "-op". the addition of such a term does not prevent a finding of confusing similarity. Further, the addition of the generic Top-Level Domain ("gTLD") ".online" also does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's JARDIANCE trade mark.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not identified or commonly known by the disputed domain name. The Respondent is not related to the Complainant in any way, and the Complainant does not carry out any activity for, and does not have any business with the Respondent. The Respondent is neither licensed nor authorized by the Complainant to make use of the Complainant's JARDIANCE trade mark, or to register the disputed domain name. Further, the disputed domain name resolves to a parking page with PPC links, which is not a bona fide offering of goods or services, or a legitimate non-commercial or fair use of the disputed domain name.
- The disputed domain name was registered and is being used in bad faith. The disputed domain name is confusingly similar to the Complainant's JARDIANCE trade mark, and was registered several years after the registration of the Complainant's JARDIANCE trade mark. A search for "jardiance op" returns results relating to the Complainant's products. It is therefore clear that the Respondent registered the disputed domain name with knowledge of the Complainant and its trade mark, which is evidence of bad faith. The

disputed domain name resolves to a parking page with PPC links. The Respondent utilized the Complainant's trade mark, and has attempted to attract Internet users for commercial gain to its own website, which is evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

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 the fact that:

- English is the language most widely used in international relations and is one of the working languages of the Center;
- the disputed domain name consists of words in Latin characters, and not in the Chinese script; and
- to proceed with the Complaint in Chinese, the Complainant would need to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Chinese in this case would therefore impose a significant burden on the Complainant in view of the low cost of these proceedings.

The Respondent did not make any submissions with respect to the language of the proceeding.

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.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of a term here, “-op”, may bear on assessment of the second and third elements, the Panel finds the addition of such a term 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.

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 name. 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 name such as those enumerated in the Policy or otherwise.

There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent was not authorized by the Complainant to use the latter’s JARDIANCE trade mark or to register a domain name incorporating the trade mark. There is no evidence that the Respondent uses the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain. The disputed domain name resolves to a webpage containing PPC links, some of which advertise third-party goods and/or services which compete with those of the Complainant.

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.

The disputed domain name incorporates the entirety of the Complainant’s JARDIANCE mark with the addition of the suffix “-op”, and it has been used for a webpage containing PPC links, some of which advertise goods and/or services which compete with the Complainant’s offerings. This appears to be a typical case of cybersquatting. As one of the largest pharmaceutical companies in the world, the Complainant would have established a not insignificant level of fame and goodwill in relation to the JARDIANCE trade mark. The Panel finds that it is more likely than not that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark. As is stated in [WIPO Overview 3.0](#), section 3.1.4:

“[P]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos [...]) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith.”

The Respondent did not file a response nor explain its choice of the disputed domain name. The Respondent also registered the disputed domain name using an outdated address. These are factors the Panel draws an adverse inference from, and which lead to its conclusion that the disputed domain name was registered and is being used 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 name <jardiance-op.online> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: November 28, 2024