

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. Liu Fen
Case No. DCO2022-0119

1. The Parties

The Complainant is Laboratoires Thea, France, represented by Scan Avocats AARPI, France.

The Respondent is Liu Fen, China.

2. The Domain Name and Registrar

The disputed domain name <theapharma.co> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 11, 2023.

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 of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on February 10, 2023. 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 has traded under its THEA and THEA PHARMA marks since 1994 in relation to ophthalmology pharmaceuticals. Its products are available in more than 70 countries worldwide.

The Complainant owns numerous trade mark registrations for its marks, including:

- International Trade Mark registration no. 996576 THEA (word) in classes 3, 5, 10, 35, 41 and 44, with registration date September 26, 2008, designating, *inter alia*, the Respondent's country, China.
- European Union Trade Mark registration no. 15064711 THEA PHARMA (word) in Classes 3, 5, 10, 35, 39, 41 and 44, with registration date of November 13, 2018.

The Complainant's marks have been recognised as well-known by prior UDRP panels (e.g. *Laboratoires Thea v. Yang Wen Bin*, WIPO Case No. [D2018-0303](#)).

The Domain Name was registered on November 24, 2022, and resolves to a website offering the Domain Name for sale for USD 1,450.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar and identical to its well-known THEA and THEA PHARMA marks, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been offered for sale taking advantage of the Complainant's reputation in its marks.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has rights in the THEA and THEA FARMA trademarks.

The Domain Name is confusingly similar to the THEA mark. The Domain Name is also identical to the Complainant's registered THEA PHARMA mark. Spaces in a trade mark can be disregarded for purposes of assessing identity or confusing similarity (*Novomatic AG v. Oleg Bakanach*, WIPO Case No. [D2020-1667](#)). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its THEA and THEA PHARMA marks were registered and well known for many years prior to registration of the Domain Name. The Domain Name is confusingly similar and identical to the Complainant's marks and the Complainant has certified that the Domain Name is unauthorised by it.

Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 2.5.1).

The Respondent has not explained why it chose the Domain Name. Given what is stated below in relation to bad faith, the likelihood is that the Respondent intended to take advantage of the Complainant's trade mark for its own commercial gain by selling the Domain Name, which cannot confer rights or legitimate interests.

There is thus no evidence that any of the circumstances set out in paragraph 4(c) of the Policy pertain, nor any others which may confer rights or legitimate interests on the Respondent. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

The Complainant's THEA PHARMA mark is well known and highly specific to the Complainant. Internet searches for that mark, which comprises the entirety of the Domain Name, return results overwhelmingly relating to the Complainant. As such, it is difficult to conceive of any use of the Domain Name – which is identical to the mark and therefore inherently misleading - that would not take advantage of the Complainant's reputation.

The Panel has independently established that Respondent was very likely the unsuccessful respondent in at least two prior UDRP cases in circumstances where the same *modus operandi* evident in this case was employed. In each of the following two cases, an identically named respondent was found to have targeted a different, well-known pharmaceutical company, offering the domain name for sale. In the second case, the sale price was the same as in this case:

- *TEVA Pharmaceuticals International GmbH v. Privacy Protection / LIU FEN*, WIPO Case No. [D2022-0034](#).
- *Boehringer Ingelheim International GmbH v. Liu Fen*, WIPO Case No. [DCO2022-0111](#).

The Respondent would appear to have a history of cybersquatting.

The Domain Name is offered for sale for USD 1,450, which is likely, without evidence from the Respondent to the contrary, in excess of the Respondent's out-of-pocket expenses relating directly to the Domain Name. In the circumstances, it is likely that the Respondent intended to sell the Domain Name by taking advantage of the Complainant's reputation. Thus, paragraph 4(b)(i) of the Policy is directly applicable.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Complainant has satisfied paragraph 4(a)(iii) 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, <theapharma.co>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: February 16, 2023