

## ADMINISTRATIVE PANEL DECISION

BeiGene Switzerland GmbH v. Xiqing Bai  
Case No. DNL2024-0041

### 1. The Parties

The complainant is BeiGene Switzerland GmbH, Switzerland, represented by Venable, LLP, United States of America (“United States”), (the “Complainant”).

The registrant of the disputed domain name is Xiqing Bai, China, (the “Respondent”).

### 2. The Domain Name and Registrar

The disputed domain name <tevimbra.nl> (the “Disputed Domain Name”) is registered with SIDN through GoDaddy.com (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2024. On October 15, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On October 16, 2024, SIDN transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the Respondent and contact information in the Complaint.

The Center sent an email communication to Complainant on the same date, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on October 21, 2024.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint and the proceedings commenced on October 22, 2024. In accordance with the Regulations, article 7.1, the due date for Response was November 11, 2024. The Center did not receive any response. Accordingly, the Center notified the Respondent’s default on November 12, 2024.

The Center appointed Moïra Truijens as the panelist in this matter on November 15, 2024. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

#### 4. Factual Background

Complainant and its affiliated entities are committed to discovering new oncology treatments and improving access to patients, including but not limited to molecularly targeted and immune-oncology cancer therapeutics as both monotherapies and for use in combination treatments.

Complainant owns a worldwide trademark portfolio, amongst which International Registration No. 1392575 for TEVIMBRA in Class 5, with the following designations: United States of America, Iceland, Japan, Norway, Türkiye, and the European Union, including the Benelux, registered January 15, 2018 (hereafter the “TEVIMBRA Trademark”)

Complainant also owns domain names that include the TEVIMBRA Trademark.

The TEVIMBRA Trademark registration predates the registration of the Disputed Domain Name as the Disputed Domain Name was registered on January 21, 2024. At the time of the filing of the Complaint, the Disputed Domain Name resolved to a page stating “This domain is for sale”.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant states that the Disputed Domain Name incorporates the TEVIMBRA Trademark in its entirety with the addition of “.nl.” It claims the addition of “.nl” is an insignificant addition which does not remove the likelihood of confusion between the TEVIMBRA Trademark and the Disputed Domain Name, as it only indicates that the domain is registered in the “.nl” gTLD.<sup>1</sup>

Complainant therefore finds the Disputed Domain Name confusingly similar to Complainant’s TEVIMBRA Trademark.

Complainant further claims that Respondent has no rights to or legitimate interests in the Disputed Domain Name. Complainant has never granted Respondent any right to use TEVIMBRA Trademark in the Disputed Domain Name, nor is Respondent making a bona fide offering of goods and/or services or noncommercial use of the Disputed Domain Name.

Additionally, Complainant states that the Disputed Domain Name was registered in bad faith as Respondent is not making genuine use of the Disputed Domain Name.

Complainant explains that due to the distinctive nature of the TEVIMBRA Trademark, Respondent is likely to have had constructive notice as to the existence of Complainant’s TEVIMBRA Trademark at the time Respondent registered the Disputed Domain Name. This constructive notice suggests that Respondent acted with opportunistic bad faith in registering the Disputed Domain Name. Complainant refers to See *Sony Kabushiki Kaisha v. Sin, Eonmok*, WIPO Case No. [D2000-1007](#); *Nintendo of Am. Inc. v. Pokemon*, WIPO Case No. [D2000-1230](#); *Yahoo! Inc. v Ashby*, WIPO Case No. [D2000-0241](#).

---

<sup>1</sup>While the Panel recognizes that “.nl” is a country code Top-Level Domain, the Panel has reflected the Complainant’s contentions without modification.

At the time of filing the Complaint the Disputed Domain Name resolved to a website stating “This domain is for sale”.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

Pursuant to article 2.1 of the Regulations, Complainant must prove each of the following three elements:

a. the Disputed Domain Name is identical or confusingly similar to:

I) a trademark, or trade name, protected under Dutch law in which Complainant has rights; or

II) a personal name registered in the General Municipal Register (“Gemeentelijke Basisadministratie”) of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which Complainant undertakes public activities on a permanent basis; and

b. Respondent has no rights to or legitimate interests in the Disputed Domain Name; and

c. the Disputed Domain Name has been registered or is being used in bad faith.

In accordance with article 10.3 of the Regulations, the Panel shall determine the admissibility, relevance, and weight of the evidence submitted; if no response has been submitted, the Panel shall rule on the basis of the Complaint; and the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact.

Complainant has shown registered rights in the TEVIMBRA Trademark under the Regulations. The Disputed Domain Name is confusingly similar to this trademark as it incorporates the TEVIMBRA Trademark in its entirety.

The country code Top-Level Domain (“ccTLD”) “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1).<sup>2</sup>

The Panel finds that the Disputed Domain Name is confusingly similar to the TEVIMBRA Trademark and that Complainant has thus established the first element of article 2.1 of the Regulations.

---

<sup>2</sup>In view of the fact that the Regulations are to an extent based on the Uniform Domain Name Dispute Resolution Policy (“UDRP”), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), may be relevant to the determination of this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

## **B. Rights or Legitimate Interests**

A complainant bears the burden of prima facie showing that the respondent has no rights to or legitimate interests in the domain name. If a complainant succeeds in making a prima facie case, the burden of production shifts to the respondent, which will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interests in the domain name (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Article 3.1 of the Regulations provides circumstances in which such rights or legitimate interests to a domain name may be demonstrated. These circumstances include: i) demonstrable preparations to use of the domain name in connection with a bona fide offering of goods or services; ii) being commonly known by the domain name; and iii) making legitimate noncommercial use of the domain name.

Based on the evidence and the undisputed submissions of Complainant, the Panel concludes that Respondent has not received Complainant's consent to use the TEVIMBRA Trademark as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the TEVIMBRA Trademark.

Respondent has not provided evidence, nor is there any indication on the record of this case that Respondent is commonly known by the Disputed Domain Name. Respondent did not demonstrate any use or demonstrable preparation to use the Disputed Domain Name in connection with a bona fide offering of goods or services. The Disputed Domain Name was used in connection with a page offering the Disputed Domain Name for sale, thus, with clear intent of commercial gain.

Moreover, the Panel notes the Disputed Domain Name is identical to Complainant's mark, which carries a high risk of implied affiliation and such composition cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by Complainant. [WIPO Overview 3.0](#), section 2.5.1 Finally, in the circumstances of this case, the Panel finds that a lack of rights to or legitimate interests in the Disputed Domain Name on the part of Respondent is further supported by the fact that no formal response was filed by Respondent.

The Panel concludes that Complainant has met the second requirement of article 2.1(b) of the Regulations.

## **C. Registered or Used in Bad Faith**

In accordance with article 3.2 of the Regulations, Complainant has to show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances put forward by Complainant make that the Panel finds that this is so.

The Disputed Domain Name is identical to Complainant's TEVIMBRA Trademark. When Respondent registered the Disputed Domain Name, the TEVIMBRA Trademark had already been registered and was being used by Complainant for its products and services. Accordingly, it is more likely than not that Respondent knew of Complainant, particularly given that "tevimbra" is a distinctive term solely associated with Complainant's trademarked cancer treatment.

While the above is sufficient for purposes of concluding Respondent's bad faith under the Regulations, the Panel notes that Complainant has argued both registration and use of the Disputed Domain Name in bad faith.

The Disputed Domain Name resolved to a parked page where it was offered for sale. Considering the composition of the Disputed Domain Name, an offer to sell the Disputed Domain Name is evidence of bad faith under art. 3.2, (a) of the Regulations.

The Panel concludes that the requirement of article 2.1(c) of the Regulations has also been met.

## 7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Disputed Domain Name <tevimbra.nl> be transferred to Complainant.

*/Moira Truijens/*

**Moira Truijens**

Panelist

Date: November 29, 2024