

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Vetmedica GmbH v. 蒋志辉 (Zhi Hui Jiang)
Case No. D2023-2011

1. The Parties

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

Respondent is 蒋志辉 (Zhi Hui Jiang), China.

2. The Domain Name and Registrar

The disputed domain name <metacamx.com> (the “Domain Name”) is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 6, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on May 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on May 10, 2023.

On May 8, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 10, 2023, Complainant submitted its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 6, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 9, 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

Complainant is a pharmaceutical group of companies founded in 1885. It has developed into a research-based pharmaceutical enterprise with approximately 52,000 employees, with three business areas, namely, human pharmaceuticals, animal health, and biopharmaceuticals contract manufacturing. In 2020, Complainant's net sales amounted to approximately EUR 19.6 billion. Complainant's METACAM product is used for cats and dogs to reduce post-operative pain and inflammation following surgery and can also be used for lactating cows and calves.

Complainant owns numerous registered trademarks across various jurisdictions with the mark METACAM, including:

- International registered trademark number 547717 for METACAM, registered on January 8, 1990; and
- European Union registered trademark number 003566891 for METACAM, registered on September 29, 2005.

Complainant also owns multiple domain names with the mark METACAM, including <metacam.com> which was registered on and in operation since June 25, 2003.

The Domain Name was registered on April 11, 2023, and directs to an active site, where it is also offered for sale for USD 2,000.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for METACAM and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known METACAM products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademark, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in registering and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the 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.

Complainant submitted its original Complaint in English. In its email dated May 10, 2023, Complainant submitted a request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant asserts that the Domain Name is registered in Latin characters, and not in Chinese scripts, that English is the language most widely used in international relations and is one of the working languages of the Center, and the Center had informed Respondent in both Chinese and English and afforded Respondent the opportunity to respond in Chinese. Complainant also contends that holding the proceeding in Chinese would cause undue delay, considerable extra expense, unfair disadvantage and burden on Complainant.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response in either Chinese or English. The Panel further notes that the disputed domain name is constructed using Latin letters and English words, as well as the fact that the website to which the Domain Name resolves is in English, all of which tends to indicate Respondent understands English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to Complainant's contentions would not by itself mean that Complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that Complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the METACAM trademarks, as noted above. Complainant has also submitted evidence which supports that the METACAM trademarks are widely known and a source identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the METACAM trademarks.

With Complainant's rights in the METACAM trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's METACAM trademark. The METACAM trademark is recognizable in the Domain Name. In particular, the Domain Name's inclusion of Complainant's trademark METACAM in its entirety, with an addition of the letter "x" after "METACAM" does not prevent a finding of confusing similarity between the Domain Name and the METACAM trademark. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with relevant evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its METACAM trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the METACAM trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the METACAM trademarks, and there is no evidence showing that Respondent has been commonly known by the Domain Name. Moreover, the Domain Name is being offered for sale on the website it resolves to for a price of USD 2,000. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the METACAM trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's METACAM trademarks and related products and services are widely known and recognized. Therefore, Respondent knew or should have known of Complainant's trademark at the time of registering the Domain Name. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's likely awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's METACAM trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the METACAM trademark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Moreover, at the time Complainant became aware of the Domain Name and of filing of the Complaint, it diverted users to an active webpage where the Domain Name was offered for sale for USD 2,000. Such use demonstrates that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with Complainant's METACAM trademark. Furthermore, the Panel considers the registration and use of the Domain Name to resolve to an active offer for sale page indicate that Respondent intends to sell the Domain Name to Complainant or to a competitor of Complainant, for valuable consideration in excess of the possible documented out-of-pocket costs directly related to the Domain Name.

Moreover, Respondent's registration of the Domain Name may confuse and mislead consumers looking for *bona fide* and well-known METACAM products and services of Complainant or authorized partners of Complainant. The use of the METACAM mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services.

Finally, the Panel also notes the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 <metacam.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: June 19, 2023