

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim International GmbH v. 于青青 (yu qing qing)
Case No. D2023-4774

1. The Parties

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

The Respondent is 于青青 (yu qing qing), China.

2. The Domain Names and Registrar

The disputed domain names <cyltezo.online> and <trajenta.online> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on November 16, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 17, 2023, 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 November 17, 2023, providing the complete 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 in English on November 20, 2023.

On November 17, 2023, the Center sent another email communication to the Parties in Chinese and English regarding the language of the proceeding. On November 20, 2023, the Complainant requested English to be the language of the proceeding. On November 20 and 24, 2023, the Respondent objected to the Complainant's request, and requested Chinese to be 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 the Respondent in English and Chinese of the Complaint, and the proceeding commenced on November 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2023. The Respondent did not send any further communication. Accordingly, the Center notified the Commencement of Panel Appointment Process on December 19, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 12, 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

A. Complainant

The Complainant is a pharmaceutical company incorporated in Germany and founded in 1885.

The Complainant manufactures, markets and sells a drug for treating chronic inflammatory diseases under the trade mark CYLTEZO; and a drug for treating diabetes under the trade mark TRAJENTA.

The Complainant is the owner of International registration No. 1242575 for the trade mark CYLTEZO, with a registration date of January 19, 2015; and International registration No. 935517 for the trade mark TRAJENTA, with a registration date of August 3, 2007.

B. Respondent

The Respondent is located in China.

C. The Disputed Domain Names

Each of the disputed domain names was registered on the same date, November 14, 2023.

D. Use of the Disputed Domain Names

The disputed domain names have each been resolved to websites hosted by Dan.com and offering each of the disputed domain names for sale as “premium” domains for USD 1,450 (the “Websites”).

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

Apart from the email communications mentioned above regarding the Respondent's request for Chinese to be the language of the proceeding, the Respondent did not formally reply to the Complainant's contentions.

6. Discussion and Findings

6.1 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 the disputed domain names comprise Roman characters and not Chinese script; and that the cost of translating the Complaint into Chinese would significantly outweigh the costs of this proceeding.

The Respondent requested that the language of the proceeding be Chinese, contending that, as his mother tongue is Chinese, he is more comfortable conducting the proceeding in Chinese; he has limited knowledge in English; the Complainant's representatives have sent email communications in Chinese; and it is the Complainant's choice to file a complaint against a Chinese respondent, the Complainant should have expected to conduct the proceeding in Chinese and if the Complainant would like to obtain the translation service, it should bear any cost.

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).

The Respondent has not filed any response and, other than its language request, has not taken any part in this proceeding. The Respondent indicates that he has limited knowledge in English. The Panel notes from the evidence provided by the Complainant, some of the content of the Websites is in English which suggests a level of proficiency with English.

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 Elements of the Policy

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

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

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

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. To the contrary, the disputed domain names have been offered for sale for USD 1,450 via the Websites.

In addition, the Panel notes the nature of the disputed domain names (being identical to the relevant trade mark), which carries a high risk of implied association. [WIPO Overview 3.0](#), section 2.5.1.

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 offer for sale of the disputed domain names incorporating the prior registered distinctive trade marks via the Websites amounts to bad faith under paragraph 4(b)(i) of the Policy.

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 <cyltezo.online> and <trajenta.online> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: January 25, 2024