

ADMINISTRATIVE PANEL DECISION

Ferring B.V. v. Privacy Protection, ID: 5372808-ER / Huade Wang
Case No. D2022-0982

1. The Parties

The Complainant is Ferring B.V., Netherlands, represented by Jacobacci Avocats, France.

The Respondent is Privacy Protection, ID: 5372808-ER / Huade Wang, China.

2. The Domain Names and Registrar

The disputed domain names <myferringbenefit.com>, <myferringbenfits.com>, and <myferringbenifits.com> are registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2022. On March 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 23, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2022, 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 March 28, 2022.

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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 21, 2022.

The Center appointed Cherise Valles as the sole panelist in this matter on May 13, 2022. 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 part of the Ferring group, which is a biopharmaceutical group, leader in reproductive medicine and women's health, and in specialty areas within gastroenterology and urology. The Ferring group was founded 71 years ago, and now owns subsidiaries operating in nearly 65 countries and markets its products in 110 countries around the world. The Ferring group had a global turnover of nearly EUR 2 billion in 2020.

The Complainant's products are sold under the trademarks FERRING and FERRING PHARMACEUTICALS, and the Complainant is the owner of 350 trademark registrations / applications for FERRING in numerous countries in the world covering notably pharmaceutical products and medical apparatus (Annex 6 of the Complaint). The Complainant also has a strong Internet presence through its large portfolio of domain names using the trademark FERRING (304 domain names) (Annex 7 of the Complaint).

In particular, the Complainant is the owner of the following trademark registrations covering pharmaceutical products (including pharmaceutical preparations or substances) and/or medical apparatus (Annex 8 of the Complaint):

- The European Union trademark registration FERRING No. 4030193 filed on September 16, 2004, and registered on September 11, 2006, and renewed;
- The United States of America trademark registration FERRING No. 3662266 filed on July 2, 2007, and registered on August 4, 2009, and renewed;
- The International trademark registration FERRING No. 615597 registered on February 18, 1994, duly renewed with designations including China (Annex 16 of the Complaint).

Among its portfolio of domain names, FERRING is the owner of the domain name <myferringbenefits.com> registered in 2016, which is used as a human resources portal for FERRING employees seeking information about their benefits (Annex 9 of the Complaint).

The disputed domain names <myferringbenefit.com>, <myferringbenifits.com>, <myferringbenfits.com> were registered on February 26, 2022, and they resolve to pay-per-click ("PPC") sites.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain names are confusingly similar to the Complainant's registered FERRING trademark, in light of the fact that they wholly incorporate the Complainant's mark.

The Respondent lacks rights or legitimate interests in the disputed domain names.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain names. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name that included its trademarks.

The disputed domain names have been registered and are being used in bad faith.

- The Complainant asserts that the disputed domain names were registered and are being used in bad

faith. The Complainant asserts that the Respondent must have been aware of the existence of the Complainant when registering the disputed domain names, considering the reputation of the Complainant's FERRING trademark. Further, the Respondent did not reply to the cease and desist letter sent by the Complainant on March 7, 2022. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use.

The Complainant requests the Panel to issue a decision finding that the disputed domain names be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for a complaint to succeed, a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and,
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

A. Identical or Confusingly Similar

To prove this element, the Complainant must have relevant UDRP rights in a trademark and the disputed domain names must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain names are confusingly similar to the trademark in which it has rights. The disputed domain names are made up of the combination of the Complainant's trademark FERRING, preceded by the word "my" and followed by the word "benefit" in the singular or in the plural ("benifits" or "benfits"), with typos.

Given the Complainant's trademark registration as detailed above, the Panel finds that the Complainant has established its trademark rights in FERRING for the purposes of paragraph 4(a)(i) of the Policy.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant asserts that the disputed domain names are confusingly similar to its trademark. It submits that the addition of the term "benefits", which refers to the advantages of a job, would be understood as referring to the perks provided by FERRING. It further notes that the structure of using "my + ferring + benefit(s)" (with or without typos) incorporates the Complainant's trademark in full, and is also almost identical to the domain name <myferringbenefits.com> owned and used by the Complainant (Annex 9 of the Complaint). As stated in section 1.9 of the [WIPO Overview 3.0](#), "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar

to the relevant mark for purposes of the first element". Thus, the inclusion of the additional terms in the disputed domain names does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's FERRING trademark.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top Level Domain ("TLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test". In the present case, the TLD ".com" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to mislead consumers or to tarnish the trademark or service mark at issue."

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (see, for example, *Linkedin Corporation v. Privacy service provided by Withheld for Privacy ehf / Scrap Linkedin*, WIPO Case No. [DIO2021-0019](#); *Bayerische Motoren Werke AG v. Domain Privacy Ltd/ DNS Admin*, WIPO Case No. [DIO2021-0012](#); and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, it appears that the Complainant has established the requisite *prima facie* case.

The Complainant has not authorized the registration the Respondent to register the disputed domain names <myferringbenefit.com>, <myferringbenfits.com> and <myferringbenfits.com>. In particular, the Complainant asserts it does not know anybody named Huade Wang, the alleged underlying registrant (Annex 15 of the Complaint).

Ferring has widely used its name and its trademarks for over 70 years, and it has also already registered many domain names with the word “ferring” for many years (Annex 5 of the Complaint) whereas the disputed domain names were registered only recently (Annex 1 of the Complaint).

An important factor in assessing the legitimate interest in respect of a domain name is that it does not falsely suggest affiliation with the complainant's trademark. Furthermore, the nature of the disputed domain name, consisting of the Complainant's FERRING trademark with the terms “my” and “benefits” in singular or plural (with and without typos) leads to the impression of affiliation with the Complainant. It cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

In addition, the Respondent has “parked” the disputed domain names, and the parking pages contain a number of sponsored links, including links to competitors of the Complainant (Annexes 12 and 13 of the Complaint). The Complainant submits that it is reasonable to infer that the Respondent earns PPC revenues in relation to such sponsored links.

As stated by the panel in *M.F.H. Fejlesztő Korlátolt Felelősséggű v. Satoshi Shimoshita*, WIPO Case No. [D2014-1726](#):

“[...] a parking page would not by itself confer rights or legitimate interests in a domain name. This is especially the case where a disputed domain name was registered with a trade mark owner's mark in mind in the hope and expectation that confused Internet users searching for the trade mark owner will be directed to the Respondent's parking page for commercial gain. Such activity does not provide a legitimate interest in that domain name under the Policy [...]”

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's FERRING trademark in any manner, including in, or as part of, the disputed domain names.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain names. In particular, the Respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name.

In light of the foregoing, the Panel finds that the Complainant has established an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain names were registered and are being used in bad faith. The term “bad faith” is “broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant's mark”. See section 3.1 of the WIPO Overview. Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the

purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or

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

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

In the present case, the Complainant's submissions relate to paragraph 4(b)(iv) of the Policy. Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent seeks to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark. Considering the reputation of Ferring, the Respondent must have been aware of the existence of the Complainant and its prior rights when registering the disputed domain names since they are almost identical to the domain name <myferringbenefits.com> owned and used by the Complainant. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The disputed domain names are also being used in bad faith by the Respondent as they display parking services pages including PPC ads. As noted in *Victoria Beckham v. David James*, WIPO Case No. [D2017-0035](#):

"[...] It is immaterial that Internet users, having viewed the parking page, may realize that it is unconnected with the Complainant or her [its] business. It is sufficient that such users will have visited the website to which the disputed domain name points in the mistaken belief that it is likely to be connected with her [it]. In other words, it is the characteristics of the disputed domain name itself, particularly when identical to the Complainant's mark which raises a heightened risk of impermissible impersonation, which creates the likelihood of confusion. [...]"

In the circumstances of this case, this type of use is "sufficient to demonstrate bad faith", see *Merck Sharp & Dohme Corp. v. Domain Administrator, PrivacyGuardian.org / George Ring, DN Capital Inc.*, WIPO Case No. [D2017-0302](#).

The Respondent has not participated in the administrative proceeding and has not answered the Complainant's contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good faith motivation in respect of the registration or use of the disputed domain name in the face of the Complainant's contentions can be regarded as an indicator of registration or use in bad faith - see, for example, *Novartis AG. v. Mathew French*, WIPO Case No. [D2020-0011](#).

As a final element showing a lack of *bona fides*, the Respondent Huade Wang did not reply to the cease-and-desist letter sent by the Complainant, via its lawyers, confirms this lack of any rights or legitimate interests (Annex 14 of the Complaint). As the panel found in *The Great Eastern Life Assurance Company Limited v. Unasi Inc.*, WIPO Case No. [D2005-1218](#), "[b]y operation of a common sense evidentiary principle, the Respondent's failure to counter the allegations of the cease and desist letter amounts to adoptive admission of the allegations".

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain names under 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 disputed domain names <myferringbenefit.com>, <myferringbenfits.com>, and <myferringbenfits.com> be transferred to the Complainant.

/Cherise Valles/
Cherise VallesSole Panelist
Date: May 27, 2022