

ADMINISTRATIVE PANEL DECISION

Sanofi v. 石磊 (Lei Shi)
Case No. D2023-3770

1. The Parties

The Complainant is Sanofi, France, represented by Selarl Marchais & Associés, France.

The Respondent is 石磊 (Lei Shi), China.

2. The Domain Names and Registrar

The disputed domain names <sanofimarketacces.com> and <sanofimarketaccess.com> are registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 11, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 amendment to the Complaint in English on September 13, 2023.

On September 12, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant submitted its request that English be the language of the proceeding on September 13, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 proceedings commenced on September 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 16, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on October 25, 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 is a French multinational pharmaceutical company headquartered in Paris (France), ranking 4th among the world's largest multinational pharmaceutical companies by prescription sales.

The Complainant has an extensive global portfolio of trade marks including the term SANOFI, including the following:

- International Trade Mark Registration for SANOFI No. 1092811 in Classes 1, 9, 10, 16, 38, 41, 42, 44, registered on August 11, 2011 designating Australia, Georgia, Japan, Republic of Korea, Cuba, Russian Federation, and Ukraine, among other countries;
- International Trade Mark Registration for SANOFI No. 1094854 in Classes 3 and 5, registered on August 11, 2011 designating Australia, Georgia, Japan, Republic of Korea, Cuba, Russian Federation, and Ukraine, among other countries;
- International Trade Mark Registration for SANOFI No. 674936 in Classes 3 and 5, registered on June 11, 1997 designating Switzerland, Cuba, Romania, Russian Federation, and Ukraine, among other countries.

Both of the disputed domain names <sanofimarketacces.com> and <sanofimarketacess.com> were registered on August 22, 2023.

Screenshots provided by the Complainant indicate that, at the time of filing the Complaint, both of the disputed domain names resolved to a pay-per-click website. At the time of issuance of this decision, both the disputed domain names continue to resolve to the same pay-per-click website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the SANOFI trade mark and that it is a leading player in its field of business.

The Complainant also asserts that the disputed domain names registered by the Respondent is identical or confusingly similar to the Complainant's SANOFI trade marks, and that the addition of the generic Top-Level Domain ("gTLD") ".com" does not affect the analysis as to whether the disputed domain names are identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant argues that the addition of "market" and the misspellings of "acces" and "acess", directly refers to the common expression "market access" which is widely used in the pharmaceutical industry to describe the process of registering and marketing new products, particularly medicines or medical devices in the healthcare sector is insufficient to distinguish the disputed domain names from the Complainant's SANOFI trade marks.

The Complainant asserts that it has not authorized the Respondent to use the SANOFI mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services.

The Complainant also asserts that there is no evidence suggesting that the Respondent has any connection to the SANOFI mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain names, especially considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain names whatsoever must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative 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."

In this case, the language of the Registration Agreements for the disputed domain names is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English and requested that English be the language of the proceeding for the following main reasons:

- The disputed domain names are made up of Latin characters rather than Chinese characters;
- The choice made by the Respondent in selecting English characters and terms in the disputed domain names advocates the fact he is inevitably acquainted with the English language; and
- The Complainant is not in a position to conduct these proceedings in Chinese without significant additional expense and delay due to the need to arrange for the translation of the Complaint and the supporting evidence.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the SANOFI trade mark in many jurisdictions around the world.

Disregarding the gTLD “.com”, both of the disputed domain names incorporate the Complainant’s trade mark SANOFI in its entirety. Thus, the disputed domain names should be regarded as confusingly similar to the Complainant’s SANOFI trade mark. The additional wordings of “market” and the misspellings of “aces” and “access”, which directly refer to the common expression “market access,” which is widely used in the pharmaceutical industry to describe the process of registering and marketing new products, does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the SANOFI trade mark and in showing that the disputed domain names are confusingly similar to its mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names. Once such *prima facie* case is made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain names. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that he enjoys rights or legitimate interests in the disputed domain names. As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s *prima facie* showing of the Respondent’s lack of rights or legitimate interests in the disputed domain names, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated his preparation to use the disputed domain names in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain names or the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

Based upon the evidence submitted by the Complainant, the Panel finds that the Complainant has demonstrated that the disputed domain names resolve to a website with pay-per-click links and finds that such use of the disputed domain names do not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Accordingly, and based on the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular, but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (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 (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark 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) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain names.

When the Respondent registered the disputed domain names, the SANOFI trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain names.

The Respondent has provided no evidence to justify his choice of the term "sanofi" in the disputed domain names. In light of the foregoing, it would be unreasonable to conclude that, at the time of the registration of the disputed domain names, the Respondent was unaware of the Complainant's trade mark.

The Complainant's registered its SANOFI trade marks for its products and services before the registration date of the disputed domain names. And a simple online search (e.g., via Google or Baidu) for the term "Sanofi" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain names with full knowledge of the Complainant's trade mark rights.

Meanwhile, the disputed domain names have been used for commercial pay-per-click links, which is confusing and disruptive in that visitors to the site might reasonably believe services offered on that site are connected to or approved by the Complainant.

Accordingly, the Panel finds that the disputed domain names were registered and are being used in bad faith.

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, <sanofimarketacces.com> and <sanofimarketacess.com>, be cancelled.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: November 8, 2023