

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH & Co KG v. Guo Zhanchen
Case No. D2023-5286

1. The Parties

The Complainant is Boehringer Ingelheim Pharma GmbH & Co KG, Germany, represented by Nameshield, France.

The Respondent is Guo Zhanchen, China.

2. The Domain Name and Registrar

The disputed domain name <spiriva.cfd> is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 20, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 2023, 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 (n/a) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 22, 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 amended Complaint on December 22, 2023.

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 December 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 19, 2024.

The Center appointed Moonchul Chang as the sole panelist in this matter on January 25, 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

The Complainant is a pharmaceutical company. It markets capsules of tiotropium bromide (an anticholinergic bronchodilator used in the management of chronic obstructive pulmonary disease) as SPIRIVA.

The Complainant owns trademark registrations for SPIRIVA in multiple jurisdictions, including the following:

- International trademark registration number 692353, registered on April 1, 1998, designating multiple jurisdictions, including China; and
- European Union trademark registration number 000789529, registered since June 16, 1999.

The above trademark registrations both specify pharmaceutical and veterinary preparations in class 5 and they are both current.

The Complainant also registered the domain name <spiriva.com> on February 15, 1999, that it uses in connection with a website where it provides information about its SPIRIVA pharmaceuticals.

The disputed domain name was registered on December 16, 2023. It resolves to an inactive webpage.

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 name.

The Complainant contends that:

(i) the disputed domain name is identical to its SPIRIVA mark.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with, nor authorized by, the Complainant in any way. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademarks, nor to apply for registration of the disputed domain name.

(iii) The disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The disputed domain name resolves to an inactive webpage and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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 burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.) The Complainant has shown rights in respect of the SPIRIVA trademark for the purposes of the Policy. (See [WIPO Overview 3.0](#), section 1.2.1.) The entirety of the SPIRIVA mark is reproduced within the disputed domain name. The disputed domain name adds a generic Top-Level Domain ("gTLD") extension (".cfd") which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the SPIRIVA mark. (See [WIPO Overview 3.0](#), section 1.11.) Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. (See [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)

The disputed domain name resolves to an inactive webpage. The Panel does not consider this to be a use of the disputed domain name in connection with a bona fide offering of goods or services for the purposes of the Policy, nor is it a legitimate noncommercial or fair use. The Respondent's name is Guo Zhanchen, which is nothing like the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

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 name. The Respondent has not rebutted the Complainant's prima facie showing because she has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name “has been registered and is being used in bad faith”. Thus, for the Complaint to succeed, a UDRP Panel must be satisfied that a domain name has been registered and is being used in bad faith. These requirements are conjunctive; each must be proven or the Complaint fails. In addition, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. ([WIPO Overview 3.0](#), section 3.2.1)

First, the Complainant obtained the registration of SPIRIVA trademarks in numerous jurisdictions earlier than the Respondent registered the disputed domain name. Having considered the longstanding use of the Complainant’s trademark SPIRIVA, it is likely that the Respondent has been aware of the Complainant and its mark when registering an identical domain name. Thus, it is considered bad faith registration that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant’s trademark so as to create a false association or affiliation with the Complainant.

Next, the disputed domain name resolves to an inactive webpage. Panels have found that the non-use of a domain name including a blank page would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). ([WIPO Overview 3.0](#), section 3.3) Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

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 name <spiriva.cfd> be transferred to the Complainant.

/Moonchul Chang/

Moonchul Chang

Sole Panelist

Date: February 7, 2024