

## **ADMINISTRATIVE PANEL DECISION**

Laboratoires Théa v. hai qing cai  
Case No. D2022-0359

### **1. The Parties**

The Complainant is Laboratoires Théa, France, represented by AARPI Scan Avocats, France.

The Respondent is hai qing cai, China.

### **2. The Domain Name and Registrar**

The disputed domain name <ftadirect.com> is registered with Gname 007 Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2022. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 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. On the following day, the Center sent an email communication to the Complainant 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 in English on February 11, 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 February 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 17, 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 a pharmaceutical company dedicated to ophthalmology. It holds trademark registrations for OFTADIRECT, including the following:

- French trademark registration number 3596401, registered on September 2, 2008, specifying services in class 35; and
- European Union trademark registration number 014358105, registered on July 10, 2015, specifying services in class 35.

The above trademark registrations remain current. The Complainant has also registered various domain names, including <oftadirect.fr>, registered on June 3, 2008, that it uses in connection with an online store, and <oftadirect.com>, also registered on June 3, 2008, that redirects to <oftadirect.fr>.

The Respondent is an individual resident in China.

The disputed domain name was created on January 12, 2022. At the time when the Complaint was filed, it resolved to a webpage displaying links to pornographic content with a video search feature, and a link to a dating website. At the time of this Decision, it no longer resolves to any active website; rather, it is passively held.

The Registrar confirmed that the language of the Registration Agreement is English and Chinese.

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain name is confusingly similar to the Complainant's OFTADIRECT trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has never been known as "Oftadirect". The Respondent is not in any way related to the Complainant's business. The Respondent is not an authorized distributor of the Complainant and does not have any business with it. The Respondent has not been licensed, contracted or otherwise permitted by the Complainant in any way to use the OFTADIRECT trademark.

The disputed domain name was registered and is being used in bad faith. It is highly likely that the Respondent knew of the existence of the Complainant's prior rights when the disputed domain name was registered. It is highly unlikely that the Respondent's choice to register a domain name similar to the Complainant's OFTADIRECT trademark was purely fortuitous. The disputed domain name resolves to a webpage displaying pornographic content which has no relationship to the Complainant's sector. Furthermore, it appears that the disputed domain name is for sale.

##### **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:

- (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.

### A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the OFTADIRECT trademark.

The disputed domain name incorporates all but one feature of the OFTADIRECT trademark, *i.e.*, the initial letter “O”. Given that the disputed domain name contains sufficiently recognizable aspects of the mark, the omission of this one letter does not avoid a finding of confusing similarity between the disputed domain name and the Complainant’s trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.9 and, for example, *Groupe La Centrale v. naveed wajid*, WIPO Case No. [D2021-3966](#).

The only other element in the disputed domain name is a generic Top-Level Domain (“gTLD”) suffix (“.com”). As a technical requirement of registration, the gTLD suffix may be disregarded in the comparison between the disputed domain name and the Complainant’s trademark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

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

As regards the first and third circumstances set out above, the disputed domain name formerly resolved to a webpage displaying links to pornographic content and a dating website. Nothing on the webpage had any apparent connection to the disputed domain name. This use was for the commercial gain of the Respondent, or for the commercial gain of the operators of linked websites, or both. The Complainant declares that the Respondent is not in any way related to the Complainant’s business and has not been licensed, contracted or otherwise permitted by the Complainant in any way to use the OFTADIRECT trademark. At the present time, the disputed domain name is passively held. In view of these

circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor that he is making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar's Whois database as "hai qing cai", not the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

"(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location."

The disputed domain name was registered on January 12, 2022, years after the registration of the Complainant's OFTADIRECT trademark. The Complainant has made longstanding use of the OFTADIRECT trademark. The disputed domain name incorporates almost all of that trademark, omitting only the letter "O", and it is almost identical to the Complainant's domain name <oftadirect.com>. The operational element of the disputed domain name is composed of the initials "fta" and the word "direct" but nothing on the webpage to which it formerly resolved has any apparent connection to those elements. Rather, the disputed domain name appears designed to attract Internet users who mistype in a browser the Complainant's domain name in the ".com" gTLD, a practice known as "typosquatting". The Respondent provides no other explanation for his registration of the disputed domain name. In these circumstances, the Panel considers it more likely than not that the Respondent was aware of the Complainant and its OFTADIRECT trademark when he registered the disputed domain name.

The disputed domain name formerly resolved to a webpage displaying links to pornographic content and a dating website. Given the findings in Section 6.B above, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent's webpage, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's webpage or of the goods or services advertised on that webpage within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has changed since the Complaint was filed and that it no longer resolves to any active website. This change in use does not alter the Panel's conclusion and may constitute a further indication of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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 disputed domain name <ftadirect.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: March 25, 2022